

## ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

**Kenneth S. Abraham & J.W. Montgomery, III**, *The Lawlessness of Arbitration*, 9 CONN. INS. L.J. 355 (2002).

The authors address the use of mandatory binding arbitration in insurance disputes. First, they discuss the validity of arbitration in disputes between insurance companies and policyholders, focusing mainly on the issue of absence of judicial review. Second, the authors consider the consequences of arbitrating such disputes on the general public, focusing on confidentiality.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{91} SUBJ MATTER: INSURANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Karen Alboukrek**, Note, *Adapting to a New World of E-Commerce: The Need for Uniform Consumer Protection in the International Electronic Marketplace*, 35 GEO. WASH. INT'L L. REV. 425 (2003).

The author discusses the need to create an international consensus regarding consumer protection issues in the electronic marketplace. Currently, there is uncertainty as to which laws should apply to online transactions. According to the author, cooperation among governments and the private sector will achieve better consumer protection. The private sector must focus on enforcing a code of conduct for consumer transactions and the government must focus on using alternative dispute resolution mechanisms to resolve online transactional disputes.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{78} SUBJ MATTER: COMPUTER

{136} ECONOMIC ADVANTAGES OF ADR

**Roger P. Alford**, *The American Influence on International Arbitration*, 19 OHIO ST. J. ON DISP. RESOL. 69 (2003).

According to the author, the Americanization of dispute resolution is quite pervasive and perhaps has been from its beginning. The author examines the waxing and waning influence on dispute resolution by the United States and addresses the arbitration field, in particular, by reviewing gains in dispute resolution by countries other than the United States. Finally, the author provides a detailed discussion about the role of the American law firm in international dispute resolution processes.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Roger P. Alford**, *Federal Court, International Tribunals, and the Continuum of Deference*, 43 VA. J. INT'L L. 675 (2003).

The author suggests that courts have difficulty when dealing with international tribunal and law decisions as they apply to domestic courts. At one extreme are full faith and credit and arbitration models, which give great deference to international tribunals. At the other are extreme are the master and no deference models, which give little or no deference to international tribunals. The author argues that a more thorough analysis and an understanding of all the varying models is required before courts can determine what degree of deference should be given to an international tribunal decision.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Reginald Alleyne**, *Arbitrators' Fees: The Dagger in the Heart of Mandatory Arbitration for Statutory Discrimination Claims*, 6 U. PA. J. LAB. & EMP. L. 1 (2003).

Recognizing the involuntary nature of non-negotiable mandatory-arbitration clauses that are made conditions of employment, the author argues that such agreements remove employers from the courts' jurisdiction on a wide range of issues. The author suggests that Congress could not have intended for the enforcement of mandatory-arbitration agreements because the process is a contradiction that falls outside the traditional voluntary nature of arbitration. Moreover the author comments that courts should not enforce such clauses because the result would override congressional intent, federal jurisdiction and procedure, and an individual's legal rights.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Marc A. Alternbernt**, Note, *Will EEOC v. Waffle House Inc. Signal the Beginning of the End for Mandatory Arbitration Agreements in the Employment Context?*, 3 PEPP. DISP. RESOL. L. J. 221 (2003).

This note analyzes the Supreme Court's decision in *EEOC v. Waffle House Inc.* and how it may ultimately affect employers and their use of arbitration agreements. Specifically, the article analyzes and comments upon the direct effect of the court's decision on the intersection of the enforcement powers of the Equal Employment Opportunity Commission with the Federal Arbitration Act.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Guillermo Aguilar Alvarez & William W. Park**, *The New Face of Investment Arbitration: NAFTA Chapter 11*, 28 YALE J. INT'L L. 365 (2003). This article suggests that arbitration under investment treaties such as North American Free Trade Agreement will enhance the type of asset protection that facilitates wealth-creating cross-border capital flows. The author argues that for investment arbitration to fulfill its promise, some mechanism must be created to promote greater sensitivity to vital host state interests.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Jose E. Alvarez**, *The New Dispute Settlers: (Half) Truths and Consequences*, 38 TEX. INT'L L. J. 405 (2003).

The author starts with the proposition that there has been a recent proliferation of international courts. He then purports to dispell what he says are the five "half-truths" of international adjudication. After discussing the half-truths the author explains the danger of believing that the half-truths are the whole truth and that there is still much to learn from the more established international courts.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Van A. Anderson**, Comment, *Alternative Dispute Resolution and Professional Responsibility in South Carolina: A Changing Landscape*, 55 S.C. L. REV. 191 (2003).

The author examines the interaction between new mandatory alternative dispute resolution programs in certain South Carolina courts and the ethical considerations for attorneys participating in these programs. The author considers problems suggested by mediators and proposes some ideas to answer the problems that have arisen from the programs.

{21} MEDIATION—GENERAL

{138} ETHICS: GENERAL

{133} COURT REFORMS

**Jane Andrewartha & Kate Borrowdale**, *English Maritime Law Update: 2002*, 34 J. MAR. L. & COM. 413 (2003).

The authors discuss recent cases in English maritime law including a recent case settled through arbitration, and the stage at which leave to appeal may be sought. Using this case as an example, the authors show the procedure for challenging an award on grounds of a serious irregularity under section 68 of the Arbitration Act of 1996.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Daryl DeValerio Andrews**, Note, *The Public Policy Exception to Arbitral Finality: Protecting Children and Preserving the Sanctity of Arbitration*, 12 B.U. PUB. INT'L L.J. 461 (2003).

Judicial review of arbitration has traditionally been limited because private agreements about private matters generally are of no concern to the public. Recently, however, the Massachusetts General Court mandated arbitration as the dispute resolution process in an area where the public has a vested interest: teacher discipline. Critics disfavor mandatory arbitration because the clauses are often ones of adhesion that favor stronger parties. The author appears to agree with the critics of legislated arbitration and addresses how the court should treat such agreements.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{83} SUBJ MATTER: EDUCATION

**Lindsay R. Androski**, Comment, *A Contested Merger: The Intersection of Class Actions and Mandatory Arbitration Clauses*, 2003 U. CHI. LEGAL F. 631 (2003).

This comment argues that class-wide arbitration in any context is improper. Using a hybrid arbitration-litigation approach that is used in some states as an example, the author argues that it is impractical for three reasons. First, the hybrid solution is practically unworkable. Second, congressional history supports the exclusion of class proceedings from arbitration. Third, the imposition of class-wide arbitration exceeds judicial authority.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

**Stephen P. Anway**, *Mediation in Copyright Disputes: From Compromise Created Incentives to Incentive Created Compromises*, 18 OHIO ST. J. ON DISP. RESOL. 439 (2003).

The author discusses the advantages of using mediation as an alternative to litigation in copyright disputes, suggesting that copyright disputes are better suited for the mediation process than non-intellectual property cases.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

**Amma Nyarko Appiah**, *Equal Access to Fish and Chips: Irish Redress of Discrimination Under the Equal Status Act*, 9 NEW ENG. J. INT'L & COMP. L. 549 (2003).

This article examines discrimination and equal employment law in Ireland and the United States by comparing the former's Equal Status Act and The Equality Authority with the latter's Civil Rights Act of 1964 and Equal Employment Opportunity Commission. The author also examines the mediation procedures used by both acts to redress grievances.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

**Arash S. Arabi**, Note, *Renegotiating Third World Debt*, 3 PEPP. DISP. RESOL. L.J. 251 (2003).

This article discusses the need for a global solution to solving the debt crisis facing much of the Third World. The author argues that the only viable solution is to come up with an alternative method of dispute resolution to deal with the debt crisis—one that is a cross between arbitration and mediation. According to the author this is important because this alternative can help alleviate the problem of Third World debt without further straining the already volatile relationship that exists between the lenders and debtor nations.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

**Tom Archibald**, *Collective Bargaining under Managed Competition in Health Care: The Ontario Home Care Experience*, 28 QUEEN'S L.J. 581 (2003).

This article discusses the decline of collective bargaining in Ontario home care. The author equates this decline with the demise of nurse enfranchisement through a workplace-level voice mechanism. The author suggests that evidence-based arbitration may be a better alternative to both the strike and interest arbitration as a way to decide HHR (Health Human Resource) issues at the workplace level.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

**Carrie A. Arnett**, Comment, *The Mexican Trucking Dispute: A Bottleneck to Free Trade. A Tough (Road) Test on the NAFTA Dispute Settlement Mechanism*, 25 HOUS. J. INT'L L. 561 (2003).

This comment reviews the Arbitral Panel's final report in *In re Cross-Border Trucking Services*, evaluating the alleged breaches of North American Free Trade Agreement (NAFTA). The author argues that NAFTA's dispute settlement mechanism lacks effectiveness absent additional, workable provisions to monitor implementation of decisions. The findings of the Panel are discussed and analysis of the Arbitral Panel and actions taken toward compliance are covered as well. The author concludes by considering the implications on effectiveness of the NAFTA dispute resolution mechanism in light of the trucking dispute.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{124} COMPARISONS: CROSS-CULTURAL

{134} DISPUTE PREVENTION

**Joseph A. Arnold**, Comment, *The Circumvention of Compulsory Arbitration: Two Bites at the Apple, or a Restoration of Employees' Statutory Rights?*, 33 SETON HALL L. REV. 1207 (2003).

The author examines situations where discrimination complaints against employers are subject to arbitration clauses that are part of employment contracts. The author argues that these complaints should not be resolved in arbitration because of the potential unfair results, and discusses ways employees can work around arbitration clauses to get to court. Ultimately the author argues that courts should refuse to enforce over-inclusive arbitration agreements.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

**Melani Aubut**, *When Negotiations Fail: An Analysis of Salary Arbitration and Salary Cap Systems*, 10 SPORTS LAW J. 189 (2003).

This article analyzes the arbitration systems in both the National Hockey League and Major League Baseball and the salary cap systems in the National Basketball Association and the National Football League. The author explores the reasons why the leagues have chosen their particular arbitration system by outlining the pros and cons of each.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{93} SUBJ MATTER: LABOR—GENERAL

**Jake A. Baccari**, Comment, *The Loewen Claim: A Creative Use of NAFTA's Chapter 11*, 34 U. MIAMI INTER-AM. L. REV. 465 (2003).

This comment analyzes the claim filed against the United States government by the Loewen Group, Inc. (a Canadian corporation involved in the death-care industry) in light of the relevant North American Free Trade Agreement (NAFTA) provisions and the influential Metalclad Arbitration. The comment also addresses the subsequent Arbitral Appeal in the British Columbia Supreme Court.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Violeta I. Balan**, Comment, *Recognition and Enforcement of Foreign Judgments in the United States: The Need for Federal Legislation*, 37 J. MARSHALL L. REV. 229 (2003).

This comment begins with a short overview of international and United States law concerning recognition and enforcement of foreign monetary judgments. The author first discusses the current status of international law

and various international legal instruments, including the New York Convention, and provides an analysis of some of the more controversial issues in both international and United States law. To remedy the problems, the author proposes a uniform federal statute intended to regulate the enforcement of foreign money judgments.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{102} SUBJ MATTER: PUBLIC POLICY

**Richard A. Bales**, Comment, *The Arbitrability of Side and Settlement Agreements in the Collective Bargaining Context*, 105 W. VA L. REV 575 (2003).

The article concerns side or settlement agreements that parties frequently sign dealing with unanticipated issues arising out of collective bargaining agreements. The author argues that the "scope of the arbitration clause" approach is the better approach to dealing with side or settlement agreements because the approach is 1) more determinate, 2) consistent with Supreme Court precedent, 3) likely to reflect the parties' intent, and 4) consistent with the Court's ideological view of labor relations.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

**Matthew T. Ballenger**, Note, *The Price of Justice: The Role of Cost Allocation in the Employment Arbitration Fairness Analysis*, 18 LAB. LAW. 485 (2003).

This note discusses the requirement of an employee to bear some or all of the expenses associated with mandatory binding arbitration of employment disputes. The author examined the issue of cost sharing using several factors such as fairness, arbitrator bias, and availability of judicial review. The note concludes that even though there are distinct trends in the judicial treatment of arbitral cost allocation, the courts are still divided on and debating the issue.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{102} SUBJ MATTER: PUBLIC POLICY

{133} COURT REFORMS

**Dinesh D. Banani**, Note, *International Arbitration and Project Finance in Developing Countries: Blurring the Public/Private Distinction*, 26 B.C. INT'L & COMP. L. REV. 355 (2003).

Project financing has become an increasingly attractive technique for financing infrastructure projects in developing countries over the last twenty years. Sponsors of project finance transactions have been successful in

dealing with legal issues that may arise by negotiating for international arbitration as the primary forum for resolving potential disputes with the host government. This note examines the possible bias that may exist in the minds of international arbiters with respect to project finance disputes between foreign investors and state entities, and the impact such bias might have on future economic relations between rich and poor nations.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{147} POWER IMBALANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Julio C. Barbosa**, *Arbitration Law in Brazil: An Inevitable Reality*, 9 SW. J. L. & TRADE AM. 131 (2002).

The author discusses the framework of the Brazilian Arbitration Law, its administration, and how it compares to arbitration laws in the United States. The author also examines how the Brazilian law relates to the international conventions regarding arbitration. The author argues that the new law will make it easier for Brazil to take part in international commerce.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**John J. Barcelo III**, *Who Decides the Arbitrators' Jurisdiction? Separability and Competence—Competence in Transnational Perspective*, 36 VAND. J. TRANSNAT'L L. 1115 (2003).

While noting that the applicable law is different throughout national jurisdictions, the author argues that international commercial arbitration can and should be studied and practiced as a body of transnational law influenced by the United Nations Commission on International Trade Law (UNCITRAL) Model Law.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL

**Shannon F. Barkley**, *Arbitrator Exceeded Authority by Eliminating Contribution*, 5 NO. 15 LAW. J., July at 2 (2003).

The author discusses a case where an arbitrator exceeded his authority by eliminating a pension wage contribution, in violation of statutory funding requirements for the State of Pennsylvania.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD



**Shannon F. Barkley**, *"May" in Arbitration Clause Not Permissive: Arbitrate or Abandon Claim*, 5 No. 7 LAW. J., Apr. at 2 (2003).

The author summarizes a 2003 ruling by the Pennsylvania Superior Court. The court held that contracts containing arbitration clauses such that "Either Party may . . . demand . . . arbitration" require the arbitration of all disputes after one party so demands.

{44} ARBITRATION—GENERAL

{91} SUBJ MATTER: INSURANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Robert Bass**, Casenote, *Tort Law-Employment Law-Rights of the EEOC*. EEOC V. Waffle House, Inc., 122 S. Ct. 754 (2002), 33 CUMB. L. REV. 727 (2003).

This case note discusses how the Supreme Court addressed whether an agreement between an employer and an employee to arbitrate employment-related disputes bars the Equal Employment Opportunity Commission (EEOC) from pursuing victim-specific judicial relief.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Marcos J. Basso & Adriana C.K. Vianna**, *Intellectual Property Rights and the Digital Era: Argentina and Brazil*, 34 U. MIAMI INTER-AM. L. REV. 277 (2003).

This article evaluates the problems that two countries in Latin America, Brazil and Argentina, are having in enforcing intellectual property rights (IPRs). These countries have made improvements, but still have deficient judicial systems and inadequate resources to protect individuals' IPRs. As a result, corporations in Brazil have begun to employ alternative dispute resolution methods to solve domain name disputes.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER

{124} COMPARISONS: CROSS-CULTURAL

**Robert M. Bastress & Joseph D. Harbaugh**, *Taking the Lawyer's Craft Into Virtual Space: Computer-Mediated Interviewing, Counseling, and Negotiating*, 10 CLINICAL L. REV. 115 (2003).

The author discusses how the lessons from *The Lawyering Process* can be applied with the use of "computer-mediated communication" in lawyer interviewing, counseling and negotiating.

{1} NEGOTIATION—GENERAL

{78} SUBJ MATTER: COMPUTER

**Sara Sun Beale**, *Still Tough on Crime? Prospects for Restorative Justice in the United States*, 2003 UTAH L. REV. 413.

There has been a sharp decline in crime in recent decades, which may mean the time is right to transition from a punitive to a restorative criminal justice system. However, the United States has become more punitive during the same time period. The author compares the U.S. punitive system to Australia's and New Zealand's restorative systems. However, the author argues that widespread use of restorative justice in the United States is hindered by the focus the media and politicians place on reducing crime.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{124} COMPARISONS: CROSS-CULTURAL

**Karen M. Becker et al.**, *Scientific Dispute Resolution: First Use of Provision 404 of the Food and Drug Administration Modernization Act of 1997*, 58 FOOD & DRUG L.J. 211 (2003).

Utilizing a formal dispute resolution process provided for in section 404 of the Food and Drug Administration Modernization Act of 1997, the Center for Devices and Radiological Health (CDRH) convened in September 2001 the first, and to date only, Medical Devices Dispute Resolution Panel to adjudicate a scientific controversy between CDRH and a sponsor pertaining to the approvability of a premarket application. This article reviews the legal and scientific basis for the request for formal dispute resolution by the sponsor, describes the procedures utilized and precedents established in the course of this administrative process, and explores the potential use of this process to resolve future scientific disputes.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

**Sandra S. Beckwith & Sherri Goren Slovin**, *The Collaborative Lawyer as Advocate: A Response*, 18 OHIO ST. J. ON DISP. RESOL. 497 (2003).

This article responds to a previously published comment by a practitioner on the ethical considerations attendant to collaborative lawyering. The author clarifies the standards of practice for collaborative lawyers, explaining that comments addressing the zeal of the lawyer in mediation and negotiation without a neutral apply equally to the collaborative lawyer.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

**Robert Bejesky**, *The Evolution in and International Convergence of the Doctrine of Specific Performance in Three Types of States*, 13 IND. INT'L & COMP. L. REV. 353 (2003).

This article historically evaluates the relative degree of government interest in ensuring that contractual relations among independent economic actors maintain integrity by examining both government ideology toward the

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private sector and the derivative authority of the judiciary as an independent actor that can be summoned to resolve contract disputes. The author discusses how the use of alternative dispute resolution methods could compel performance by private actors.

{21} MEDIATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{102} SUBJ MATTER: PUBLIC POLICY

{75} SUBJ MATTER: COMMERCIAL

**Klaus Peter Berger**, *Renegotiation and Adaptation of International Investment Contracts: The Role of Contract Drafters and Arbitrators*, 36 VAND. J. TRANSNAT'L L. 1347 (2003).

This article examines ways to protect investors from disturbances in the commercial balance agreed to or assumed by parties at the conclusion of a commercial contract through the use of renegotiation mechanisms within the context of the commercial agreement. The author argues that parties should desire to avoid contract adaptation by arbitral tribunals whenever possible, and analyzes the recourse that is available for parties when their contracts contain re-negotiation clauses versus when these clauses are not present.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Vivian Berger**, Comment, *Employment Mediation in the Twenty-First Century: Challenges in a Changing Environment*, 5 U. PA. J. LAB. & EMP. L. 487 (2003).

This article discusses the changing and more frequent use of mediation in employment disputes. The author argues that, to be effective, mediation should take place soon after conflicts arise, preferably at the workplace level. The author also lists additional practices for employer-sponsored mediation that may make mediation more effective in the workplace.

{21} MEDIATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Albert G. Besser**, *The Arbitrator Blew It! Now What?*, 29 VT. B.J., Summer at 39 (2003).

This article deals with issues surrounding mistakes made by arbitrators. The author believes that often parties must live with those mistakes. However, he concedes that there is a growing tendency among courts to throw out decisions that completely ignore the law.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{127} REQUIREMENTS: MANDATE TO USE

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Michael Theodore Bigos**, *Maine Considers the Uniform Mediation Act*, 18 ME B. J. 222 (2003).

The author reports that state legislatures nationwide are considering the new Uniform Mediation Act (UMA), and specifically, this article looks at the state of Maine's consideration of the new Act. The author elaborates on Maine's legislative processes and compares Maine's current mediation statutes to the UMA.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Timothy S. Bland**, *Recent Court Decisions Have Implications for Arbitration and Mediation*, 39 TENN. B.J. Oct. at 22 (2003).

This article summarizes two recent court cases. In the first case, *McMullen v. Meijer Inc.*, the Sixth Circuit Court of Appeals held that an arbitration agreement giving the employer the right to unilaterally select from a pool of potential arbitrators was unfair and unenforceable. In the second case, *Fisher v. G.E. Medical Systems*, the U.S. District Court for the Middle District of Tennessee ruled that the Federal Arbitration Act (FAA) permits employees to be compelled to mediate claims under the Fair Labor Standards Act (FLSA).

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Maura Blue Jeffords**, *Turning the Protester Into a Partner for Development: The Need for Effective Consultation Between the WTO & NGOs*, 28 BROOK. J. INT'L L. 937 (2003).

The author examines the relationship between the World Trade Organization (WTO) and non-government organizations (NGOs) and discusses how NGOs could bring their voices to bear in resolving disputes under the WTO's system. The author argues that NGOs should be allowed to participate in negotiations and to offer amicus briefs to the WTO's dispute resolution body.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICY AND RULES

**Melvin Blumberg**, *Why Good Engineers Make Bad Decisions: Some Implications for ADR Professionals*, 108 PENN ST. L. REV. 137 (2003).

The author spends much of the article examining the ethics of engineers specifically looking at decisions made by engineers at National Aeronautics and Space Administration. He then concludes the article by making suggestions for alternative dispute resolution professionals and their ethical behavior based on common mistakes made in the field of engineering.

{44} ARBITRATION—GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

{138} ETHICS: GENERAL

**Dr. iur. Ulrich Boettger**, *Efficiency Versus Party Empowerment—Against A Good-Faith Requirement In Mandatory Mediation*, 23 REV. LITIG. 1 (2004).

This article discusses good-faith requirements in the context of mandatory mediation. The author contends that good faith requirements may threaten the mediation process, specifically the role of confidentiality in the process, the mediator's role in the process, and the future of mediation. Rather than imposing a good-faith requirement, the author contends that parties should be encouraged, rather than required, to mediate in good faith.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{127} REQUIREMENTS: MANDATE TO USE

{132} CONFIDENTIALITY

**Robert G. Bone**, *Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness*, 83 B.U. L. REV. 485 (2003).

This article examines one set of policy arguments dealing with the "fairness" of procedural rules. Policy debates concerning fairness in civil procedure and procedural reform have been the center of legal debates. The Advisory Committee on Civil Rules has been engaged over the past two decades in implementing important amendments to the Federal Rules of Civil Procedure, including changes to pre-trial practice; in response trial judges have experimented with a number of novel litigation techniques like aggressive settlement, mediation, mini-trials, summary jury trials, and trial by sampling.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

**James W. Bozzomo & Gregory Scolieri**, *Unified Family Courts: A Survey of Unified Family Courts: An Assessment of Different Jurisdictional Models*, 42 FAM. CT. REV. 12 (2004).

The article evaluates Unified Family Courts (UFCs). A UFC combines all the essential elements of traditional family and juvenile courts into one entity and contains other resources, such as social services, critical to the resolution of a family's problems. The structure of a unified family court promotes the resolution of family disputes in a fair, comprehensive, and expeditious way. It allows the court to address the family and its long-term needs as well as the problems of the individual litigant. Every jurisdiction claiming to be a UFC has access to some form of mediation to aid in settling family problems.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Julie K. Bracker & Larry D. Soderquist**, *Arbitration in the Corporate Context*, 2003 COLUM. BUS. L. REV. 1.

In this article, the authors provide a detailed look at arbitration clauses and their effects on businesses in order to allow contract writers to make an informed decision when deciding whether to include an arbitration clause. The authors examine the history behind modern arbitration law and then observe the importance of the availability of judicial review. Lastly, the authors discuss recent federal caselaw to review the most current law on the subject.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{81} SUBJ MATTER: CORPORATE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Kathleen Brady**, *Religious Organizations and Mandatory Collective Bargaining Under Federal and State Labor Laws: Freedom From and Freedom For*, 49 VILL. L. REV. 77 (2004).

This article discusses the Catholic church's refusal to engage in collective bargaining with employees of the Church. The article discusses the tension between the secular aspects of collective bargaining and the view by the Church that the employment issues may be a religious subject matter. The article also explains the fear that religious organizations hold concerning their ability to arrange their employment structures according to their religious ideologies, rather than secular views.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{124} COMPARISONS: CROSS-CULTURAL

**Lisa Schultz Bressman**, *Beyond Accountability: Arbitrariness and Legitimacy in the Administrative State*, 78 N.Y.U. L. REV. 461 (2003).

Governmental agencies now choose other methods, such as guidance documents or settlement negotiations instead of rulemaking, for making policy. The author argues that the Supreme Court needs to congratulate agencies that elaborate policy in areas of uncertainty using negotiations, rather than restrict such methods.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{102} SUBJ MATTER: PUBLIC POLICY

**Lester Brickman**, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competing Fees*, 81 WASH. U. L.Q. 653 (2003).

In his review of contingency fee issues, the author examines the recent tobacco litigation, and the contingency fees awarded to the attorneys. Because the public would have been outraged at attorneys receiving such large amounts of money from the contingency fee agreements, secret arbitration processes arose, which excluded the public. The author argues

that the label of arbitration itself was a misnomer, as the third arbitrator in these cases was not a neutral party.

{44} ARBITRATION—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{138} ETHICS: GENERAL

**Charles N. Brower & Jeremy K. Sharpe**, Note & Comment, *International Arbitration and the Islamic World: The Third Phase*, 97 AM. J. INT'L L. 643 (2003).

The authors discuss the three phases that the Islamic world has undergone with regards to international arbitration. Each phase reflects the power equations of Islam, along with the relationship between the domestic law of Islamic states and international law. The phases of the Islamic world have contributed to the increasingly convergent views of a need to harmonize an international arbitration culture.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

**Max Douglas Brown et al.**, *Alternative Dispute Resolution Strategies in Medical Malpractice*, 6 DEPAUL J. HEALTH CARE L. 249 (2003).

This is a panel discussion between three panelists at the DePaul Law School symposium on medical malpractice and the use of mediation to resolve medical malpractice disputes. One of the panelists speaks about his hospital's recently established mediation service for families exposed to medical malpractice. He speaks of mediation as a opportunity to reach a reasonable malpractice settlement and also mentions mediation as a mechanism allowing the hospital to apologize.

{21} MEDIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{89} SUBJ MATTER: HOSPITALS

**James P. Buchele & Larry R. Nute**, *The Changing Face of Arbitration: What Once Was Old Is New Again*, 72 J. KAN. B. A., Aug. at 36 (2003).

Beginning in the mid-1980s, the U.S. Supreme Court consistently upheld a national policy favoring arbitration that was envisioned by Congress when the now Federal Arbitration Act (FAA) was enacted in 1925. This article places an emphasis on examining the changes in the law of arbitration over the last 20 years based upon Supreme Court interpretation of the FAA. As the use of arbitration expands, practitioners will need to be more cognizant of issues such as judicial review that arise in an arbitral setting as well as the points that must be covered in agreements to arbitrate in order to serve their clients properly.

- {44} ARBITRATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {128} REQUIREMENTS: STATUTORY OR RULES
- {133} COURT REFORMS

**Barbara K. Bucholtz**, *Father Knows Best: The Court's Result-Oriented Activism Continues Apace: Selected Business-Related Decisions from the 2002-2003 Term*, 39 TULSA L.J. 75 (2003).

This author examines a variety of Supreme Court cases that would not commonly be considered business law, but are sufficiently business-related to make their analysis important for scholars and practitioners. The author also examines arbitration cases during the years of 2000-2003, and finds that the Supreme Court continually decides cases along the strong national policy of favoring arbitration.

- {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
- {81} SUBJ MATTER: CORPORATE
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Maria Beatriz Burghetto**, *Notes on Arbitration in Argentina*, 9 L. & BUS. REV. AM. 471 (2003).

This author addresses the current issues in Argentina arbitration law. She describes the current status of arbitration law, analyzes legislative initiatives, and comments on the current practice of arbitration in Argentina.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {144} LEGISLATION

**John M. Burnman**, *Lawyers and Domestic Violence: Raising the Standard of Practice*, 9 MICH. J. GENDER & L. 207 (2003).

This author discusses the basic information every lawyer should know about domestic violence because he believes that nearly every lawyer will encounter domestic violence at some point in his career. The author comments on and explains the use of mediation that is often used in certain domestic violence situations in order to make attorneys aware of the practice.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Joseph S. Burns**, *Predispute Arbitration Agreements in Ohio: An Employer's Guide to Creating an Enforceable Agreement*, 28 U. DAYTON L. REV. 351 (2003).

This article establishes the requirements necessary for the creation and implementation of a successful employment arbitration agreement in Ohio. The author discusses the relevant caselaw on this topic and describes certain topics that should or should not be addressed in employment arbitration



agreements and how inclusion or omission of these topics may affect enforceability.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Edward A. Burnstein**, Comment, *Non-Legal Sanctions and Strategic Alliances: The Use of the Marriage Contract as a Model for Strategic Alliances*, 53 CASE W. RES. L. REV. 945 (2003).

The author suggests two important components that should be included in the creation of a strategic alliance—an at-will termination clause and “extra-legal inputs.” The author encourages attorneys negotiating such agreements to look outside the legal realm to help facilitate agreements and advise clients on the costs and benefits of such an alliance.

{1} NEGOTIATION—GENERAL

{81} SUBJ MATTER: CORPORATE

{151} ROLE OF LAWYERS

**Kelly Burton Beam**, Note, *Administering Last Rites to Employee Rights: Arbitration Enforcement and Employment Law in the Twenty First Century*, 40 HOUS. L. REV. 449 (2003).

This note discusses the Supreme Court’s decision in *Circuit City* which forced a ruling that adversely affects employees nationwide. The facts of the case and the rationale of the Court are explored, along with review of contrary opinions of two of the justices. Following a review of the Federal Arbitration Act and its legislative history, the author addresses the hazards of arbitral enforcement when the arbitration agreement is in an employment contract.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{144} LEGISLATION

**Mijha Butcher**, Note, *Using Mediation to Remedy Civil Rights Violations When the Defendant is Not an Intentional Perpetrator: The Problems of Unconscious Disparate Treatment and Unjustified Disparate Impacts*, 24 HAMLINE J. PUB. L. & POL’Y 225 (2003).

In the workplace, actions that have a disparate impact on minorities and women often go unremedied because aggrieved persons seek redress in court. The author notes that workplace discrimination occurs very frequently, particularly against women and minorities, and in many respects it is a “wrong without a right.” The author posits that alternative dispute resolution solutions, particularly mediation and arbitration, may have better results than the traditional methods used to handle workplace disputes. This is true because when settlement requires a change in procedure, all similarly

situated employees will also receive relief and the hands-on nature of mediation helps supervisors identify and address conflict.

{21} MEDIATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{76} SUBJ MATTER: CIVIL RIGHTS

**Jamie Dodge Byrnes & Elizabeth Pollman**, Case Comment, *Arbitration, Consent and Contractual Theory: The Implications of EEOC v. Waffle House*, 8 HARV. NEGOT. L. REV. 289 (2003).

This article discusses the *EEOC v. Waffle House* case and five state law cases for compelling arbitration by a non-signatory. The authors ultimately conclude that the *Waffle House* holding has limited, but not completely precluded, the expansion of binding arbitration to non-signatories.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

**Richard P. Campbell**, *The September 11th Attack on America: Ground Zero in Tort and Insurance Law*, 9 CONN. INS. L.J. 51 (2003).

This article deals with how funds are distributed to the victims of the September 11th attacks. The Special Master has no duty to arbitrate, litigate, or resolve in any way disputes regarding the Personal Representative. Once an award is determined, the Special Master reviews the Personal Representative's plan to distribute the award to the decedent's beneficiaries and may order a redistribution of the award to ensure that the beneficiaries are compensated quickly.

{44} ARBITRATION—GENERAL

{91} SUBJ MATTER: INSURANCE

{87} SUBJ MATTER: GOV'T

**Thomas E. Carbonneau**, *The Exercise of Contract Freedom in the Making of Arbitration Agreements*, 36 VAND. J. TRANSNAT'L L. 1189 (2003).

Recognizing the traditional distinction between the international and domestic aspects of the law of arbitration, the author discusses how U.S. arbitration law has departed with this traditional distinction and the current trend is for rules of arbitration law that are of general application.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Richard M. Cartier**, *Mediating Local Intergovernmental Disputes—Reflections on the Process*, 13 SAN JOAQUIN AGRIC. L. REV. 1 (2003).

The author examines a dispute between the city of Fresno, the county of Fresno, and the city of Clovis, California, and how it was settled through mediation. The author discusses the competing interests of the three parties

and how they were able to discuss them together through the mediation process.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

**Carl J. Chiappa & David Stoelting**, *Tip of the Iceberg? New Law Exempts Car Dealers from Federal Arbitration Act*, 22 FRANCHISE L.J. 219 (2003).

The authors discuss the Motor Vehicle Franchise Contract Arbitration Fairness Act (MVFCA), which creates, for the first time, a special-interest exception to the Federal Arbitration Act (FAA). The authors argue that although lobbying for exceptions to the FAA is widespread, such "carve-outs" foster uncertainty about the future of contractual arbitration.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{79} SUBJ MATTER: CONSUMER

{128} REQUIREMENTS: STATUTORY OR RULES

**Warren B. Chik**, *U.S. Jurisdictional Rules of Adjudication over Business Conducted via the Internet—Guidelines and a Checklist for the E-Commerce Merchant*, 10 TUL. J. INT'L & COMP. L. 243 (2002).

Recognizing the fact that the current tests for personal jurisdiction are flexible, the author discusses the ways in which the current tests could be applied to decide personal jurisdiction for businesses engaged in E-commerce. The author argues that one of the ways to avoid the problem of personal jurisdiction is to use a mandatory alternative dispute resolution clause in the purchase contract.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Christine Chinkin**, *Gender, Human Rights, and Peace Agreements*, 18 OHIO ST. J. ON DISP. RESOL. 867 (2003).

This article addresses international peace agreements, and particularly the impact of gender on peace agreements and international human rights. It comments on various international treaties dealing with women and their impact on dispute resolution. The author discusses the need for involving women in the social, political and economic sectors and the role that international organizations play in integrating women into the peace process.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

**Hiram E. Chodosh**, *Emergence from the Dilemmas of Justice Reform*, 38 TEX. INT'L L. J. 587 (2003).

The author discusses a series of navigational tools and suggests that less reliance on external perspectives and hierarchical decisionmaking, along with greater investments in internal awareness and local participation hold greater promise of achieving widely shared justice reform aims.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Stephen J. Choi**, *The Problem With Arbitration Agreements*, 36 VAND. J. TRANSNAT'L L. 1233 (2003).

Recognizing that arbitration procedures have become highly standardized, the author discusses Thomas Carbonneau's proposal for the exercise of contract freedom in making arbitration agreements and suggests reasons why even sophisticated parties generally forgo the opportunity to tailor their agreements.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Kevin C. Clark**, *The State of Arbitral Fees After Green Tree Financial: Uncertainty And Contradiction Demands Further Guidance From The Supreme Court*, 3 PEPP. DISP. RESOL. L.J. 133 (2003).

This article focuses on the effects of the U.S. Supreme Court decision in *Green Tree Fin. Corp. v. Randolph* on arbitral fees in employee-employer arbitration agreements. The author addresses the issues surrounding arbitral fees that have arisen in the post-*Green Tree* era, concluding that the uncertainty of arbitral fees has left employers, employees, and their prospective counsel in legal limbo and frequently incapable of utilizing arbitration to effectively settle employment disputes.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Robert A. Clifford et al.**, *Anatomy of a Malpractice Case from a Litigator's Perspective*, 6 DEPAUL J. HEALTH CARE L. 279 (2003).

This is a panel discussion between three panelists at the DePaul Law School symposium on medical malpractice. The panelists discuss the merits of using mediation to resolve medical malpractice claims.

{21} MEDIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{89} SUBJ MATTER: HOSPITALS

**David S. Coale, et al.**, *Annual Survey of Texas Law, Civil Evidence*, 56 SMU L. REV. 1205 (2003).

This article is about admissibility of expert testimony, including admissibility of information presented during mediation sessions in Texas. The authors note that under the alternative dispute resolution (ADR) confidentiality statute in Texas, information presented during a mediation is discoverable, if it is discoverable independent of the ADR procedure itself, and that the ADR confidentiality statute should not preclude the gathering of evidence for a separate cause of action.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

**Jonathan R. Cohen**, *Let's Put Ourselves out of Business: On Respect, Responsibility, and Dialogue in Dispute Resolution*, 108 PENN ST. L. REV. 227 (2003).

The author describes a utopian society in which practitioners of alternative dispute resolution are not needed because individuals can avoid or solve all their disputes themselves. He does this through a daydream scenario in which he suggests that respect, responsibility, and dialogue will solve all of the world's problems.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{77} SUBJ MATTER: COMMUNITY

{138} ETHICS: GENERAL

**Alexander Colvin**, *Institutional Pressures, Human Resource Strategies, and the Rise of NonUnion Dispute Resolution Procedures*, 56 INDUS. & LAB. REL. REV. 375 (2003).

This article discusses the differences that result when employers choose to use the dispute resolution procedure of nonunion arbitration versus the procedure of peer review.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Barbara Cosens**, *Water Dispute Resolution in the West: Process Elements For the Modern Era in Basin-Wide Problem Solving*, 33 EVNTL. L. 949 (2003).

This article addresses some of the shortfalls between law and reality in the area of water law. The author suggests that negotiation may very well herald a new era for water distribution and management in the West, one tailored to the problems faced by specific water basins and structured around governance that mimics basin boundaries

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

**Larry Coury**, Note, *C'est What? Saisie! A Comparison of Patent Infringement Remedies Among G7 Economic Nations*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J 1101 (2003).

As technology-based commerce becomes more global, the pressure to protect intellectual property rights on an international scale is increasingly more intense. The remedies for patent infringement and standards under which they are awarded, however, differ markedly among countries. The author compares the civil remedies available for patent infringement in the G7 countries. In addition, the interplay of patent infringement proceedings among different countries is discussed.

{21} MEDIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{124} COMPARISONS: CROSS-CULTURAL

**Grace E. D'Alo**, *Reflections of Pennsylvania's ADR Community: Paradise, Pragmatism, and Progress*, 108 PENN ST. L. REV. 309 (2003).

This article discusses the state of Pennsylvania's attempt to create a structure and design to deliver alternative dispute resolution (ADR) services to both the public and private sectors. The author discusses the concern that having money from structured organizations will institutionalize ADR.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{77} SUBJ MATTER: COMMUNITY

{125} COMPARISONS: HISTORICAL

**Grace E. D'Alo**, *Accountability in Special Education Mediation: Many a Slip 'Twixt Vision and Practice?*, 8 HARV. NEGOT. L. REV. 201 (2003).

This article discusses efforts by states, in particular Pennsylvania, to provide mediation to parents and school districts involved in special education disputes as mandated by recent federal legislation. Looking at the qualitative and quantitative survey data from Pennsylvania, the author concludes that this data suggests numerous needs including more relevant mediator evaluation tools, stricter mediation training standards, and better measures of the program's quality to stakeholder goals and program design.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{102} SUBJ MATTER: PUBLIC POLICY

{127} REQUIREMENTS: MANDATE TO USE

**Maria Greco Danaher**, *Some Arbitration Agreements Deemed Unenforceable*, 5 LAW. J., Oct. at 8 (2003).

Some employers require each prospective employee to enter into an agreement to arbitrate employment-related disputes. Such agreements are fully effective only if the individual terms and conditions are enforceable

under a contract analysis. To be enforceable, the agreement's provisions must be mutually beneficial and clearly understandable. The costs involved in litigation of these agreements have become substantial for companies. As a result, companies should consider this when drafting arbitration agreements.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

**Tania Davenport**, Note, *An American Nightmare: Predatory Lending in the Subprime Home Mortgage Industry*, 36 SUFFOLK U. L. REV. 531 (2003).

This note discusses the subprime lending market from 1980 to 1990 and identifies the most common victims of predatory lending. The author defines predatory practices and distinguishes them from legitimate practices, and then discusses certain laws designed to curb predatory lending. Lastly, the author provides a broad overview of some of the ways predatory lending can be eliminated.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{125} COMPARISONS: HISTORICAL

**Jonathan M. Davidson**, *Land Use ADR Report: Enforcing Compliance With Negotiated Agreements*, 35 URB. LAW. 749 (2003).

This article discusses numerous recent court decisions concerning negotiated land use agreements. The article demonstrates that courts focus on the terms and relative bargaining authority of the parties when interpreting these agreements.

{21} MEDIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

**Joshua P. Davis**, *Arbitration: Trial by Other Means or Settlement by Other Means?*, 38 U.S.F. L. REV. 7 (2003).

This article seeks to address whether the outcome of arbitration is law or an extension of the parties right to engage in their own form of dispute resolution. The author contends that the University of San Francisco's Symposium on Mandatory Arbitration Clauses establishes that there are many views on this question, and that there is a need to develop a coherent theory about the similarities of arbitration to trial and to settlement.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Mark J. Davis**, *Practice Before the Copyright Arbitration Royalty Panel in 17 U.S.C. 111 Distribution Proceedings*, 5 VAND. J. ENT. L. & PRAC. 11 (2003).

The author provides a broad overview of the Copyright Arbitration Royalty Panel, including its history, composition, conduct, and processes. The author then focuses on the section 111 claim process, and provides an outline for practice before the Panel.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{75} SUBJ MATTER: COMMERCIAL

**Nathan K. DeDino**, Note, *When Fences Aren't Enough: The Use of Alternative Dispute Resolution to Resolve Disputes Between Neighbors*, 18 OHIO ST. J. ON DISP. RESOL. 887 (2003).

This note argues that the increased use of alternative dispute resolution in neighborly disputes will result in not only an increased number of resolutions, but also better resolutions. The author argues that alternative dispute resolution is particularly well-suited to resolving conflicts between neighbors. Because disputes between neighbors frequently involve minor annoyances, the prospect of formal litigation is simply too daunting for most persons: the costs are too high and the commitment too great.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

**David L. Dickinson**, *A Comparison of Conventional, Final-Offer, and "Combined" Arbitration for Dispute Resolution*, 57 INDUS. & LAB. REL. REV. 288 (2004).

This article reports the results from a laboratory test of disputant behavior under three different forms of arbitration: conventional arbitration (CA), final-offer arbitration (FOA), and an innovative procedure—as yet untried in real-world cases—called “Combined Arbitration” (CombA) that combines elements of CA and FOA. The study shows that dispute rates are lowest in conventional arbitration and highest in combined arbitration. The article discusses the study’s impact on the future of combined arbitration and final-offer arbitration as successful tools in dispute resolution.

{44} ARBITRATION—GENERAL

{146} ORGANIZATION POLICIES & RULES

{147} POWER IMBALANCE

{134} DISPUTE PREVENTION

**Robert N. Dobbins**, *UNCITRAL Model Law on International Commercial Conciliation: From a Topic of Possible Discussion to Approval by the General Assembly*, 3 PEPP. DISP. RESOL. L.J. 529 (2003).

This article describes the life of the Model Law on International Commercial Conciliation created by the United Nations Commission on International Trade Law (UNCITRAL). The article shows how the Model Law began in the shadow of arbitration as a possible work topic (conciliation) considered



by the Commission and in the span of two and a half years became what is known as the Model Law.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**David Dolinko**, *Restorative Justice and the Justification of Punishment*, 2003 UTAH L. REV. 319 (2003).

This article examines restorative justice as a new vision of the goals to pursue in criminal cases rather than simply a new way of achieving familiar goals. The author criticizes restorative justice, especially the views held by John Braithwaite. He questions whether the term "crime" used in the traditional criminal justice system can survive the transition to a system of restorative justice, since the purpose of restorative justice is to restore the victim to a pre-crime state.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{125} COMPARISONS: HISTORICAL

**Carrie G. Donald & John D. Ralston**, *Arbitral Views of Sexual Harassment: An Analysis of Arbitration Cases*, 20 HOFSTRA LAB. & EMP. L.J. 229 (2003).

This article examines cases of sexual harassment arbitration published by the Bureau of National Affairs between 1990 and 2000. The study in this article begins with a discussion of what constitutes sexual harassment, what acts and conditions have been considered sexual harassment during arbitrations, and the problems of sexual harassment cases in arbitration.

{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

**Christopher R. Drahozal & Keith N. Hylton**, *The Economics of Litigation and Arbitration: An Application to Franchise Contracts*, 32 J. LEGAL STUD. 549 (2003).

The authors examine the legal arenas of litigation and franchise agreements to determine which factors most significantly motivate the creation of arbitration agreements in a franchise agreement. They theorize that such contracts are motivated by the desire to minimize costs, but find that deterrence concerns are actually more significant than the desire to avoid the costs of litigation.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{136} ECONOMIC ADVANTAGES OF ADR

**Christopher R. Drahozal**, *Contracting Around RUAA: Default Rules, Mandatory Rules, and Judicial Review of Arbitral Awards*, 3 PEPP. DISP. RESOL. L. J. 419 (2003).

This article gives an overview of the theory of default rules and mandatory rules as well as examining the Revised Uniform Arbitration Act's (RUAA) default rule approach. The author also investigates the enforceability of expanded review provisions under both RUAA and the Federal Arbitration Act.

{44} ARBITRATION—GENERAL

{144} LEGISLATION

**Tina Drake Zimmerman**, *Representation in ADR and Access to Justice for Legal Services Clients*, 10 GEO. J. ON POVERTY L. & POL'Y 181 (2003).

This article details how Legal Services Corporation (LSC) attorneys use alternative dispute resolution (ADR) and how those attorneys should be educated to better use ADR. The article details why attorneys typically use ADR in their practices, and then surveys literature on the use of ADR in poor communities. The article also contains case studies of housing mediation programs that are available at no cost in certain areas, and the mediation process generally.

{21} MEDIATION—GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

{90} SUBJ MATTER: RENTAL HOUSING

**Charles J. Dunlap, Jr. & Paula B. McCarron**, *Negotiations Goes to War*, 12 USAFA J. LEG. STUD. 1 (2002/2003).

This article focuses on the importance of negotiation skills to judge advocate generals (JAGs). Based, however, on the operational situations and interactions today's military commanders encounter, this article stresses how and why negotiations skills should be an important part of every JAG's toolkit.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{155} TEACHING

**Alana Dunnigan**, Comment, *Restoring Power to the Powerless: The Need to Reform California's Mandatory Mediation for Victims of Domestic Violence*, 37 U.S.F. L. REV. 1031 (2003).

California was one of the first states to mandate mediation for custody and visitation disputes. The problem with the mandatory mediation is that it injures battered women and children because it puts too much power in the hands of their abuser. This article suggests that to truly protect victims of domestic abuse and their children, California must reform its mandatory requirements.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {127} REQUIREMENTS: MANDATE TO USE
- {147} POWER IMBALANCE

**Jeffery J. Dywan**, *An Evaluation of the Effect of Court-Ordered Mediation and Proactive Case Management on the Pace of Civil Tort Litigation in Lake County, Indiana*, 2003 J. DISP. RESOL. 239.

This article examines three Indiana studies to determine the effectiveness of court-ordered mediation. The author concludes that proactive court management, in which the judge meets with the parties early on to determine whether mediation is feasible and set deadlines for mediating a decision, has a greater impact on the pace of civil litigation than ordinary mediation. However, the author argues that mediation should also be used to help reduce backlogs and disposition time.

- {21} MEDIATION—GENERAL
- {110} SUBJ MATTER: TORTS—OTHER
- {128} REQUIREMENTS: STATUTORY OR RULES
- {133} COURT REFORMS

**Zohar Efroni**, *The Anticybersquatting Consumer Protection Act and the Uniform Dispute Resolution Policy: New Opportunities for International Forum Shopping*, 26 COLUM.-VLA J.L. & ARTS 335 (2003).

In this article, the author discusses the legal implications for various types of cybersquatters, such as individuals who buy certain domain names and then make a profit by selling them to the mark owners. The author examines the current law on cybersquatting including personal jurisdiction, trademark issues, and judicial review. He also specifically examines the Anticybersquatting Consumer Protection Act and the Uniform Dispute Resolution Policy adopted by the Internet Corporation for Assigned Names and Numbers to determine their effectiveness against cybersquatters.

- {21} MEDIATION—GENERAL
- {78} SUBJ MATTER: COMPUTER
- {81} SUBJ MATTER: CORPORATE
- {144} LEGISLATION

**Kathryn R. Eisenstein**, Note, *EEOC v. Waffle House: Equal Opportunity for All . . . or at Least Until the Budget Runs Out!*, 80 U. DET. MERCY L. REV. 411 (2003).

In the wake of *Gilmer v. Interstate/Johnson Lane Corp.* and with the increasing inclusion of mandatory arbitration clauses in employment contracts and applications, the Equal Employment Opportunity Commission (EEOC) issued a formal policy statement declaring that agreements mandating binding arbitration of discrimination claims as a condition of

employment are detrimental to the twin goals of interpretation and enforcement of employment discrimination laws. The EEOC supports alternative dispute resolution when such avenues are freely chosen by employer and employee alike.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{146} ORGANIZATION POLICIES & RULES

**Kathy Elton & Michelle M. Roybal**, *Restoration, A Component of Justice*, 2003 UTAH L. REV. 43 (2003).

This article examines one specific failure of the modern criminal justice system: the inability of victims to tell their stories and express their feelings about the experience, leaving them to feel “twice-victimized.” The authors argue that victim-offender mediation, with its focus on restorative justice, will allow victims to vent and contribute to the overall healing process in ways that the current system does not, thereby achieving true justice.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{133} COURT REFORMS

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

**Janet Stidman Eveleth**, *Dispute Resolution Comes of Age*, 36 MD. B. J., Aug. at 2 (2003).

The author discusses the history and development of dispute resolution in Maryland and comments on the ability of the program to build upon its past successes. The author focuses on the benefits of dispute resolution within Maryland’s culture and court systems, and the integral part it has come to play within Maryland society.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

**Christopher M. Fairman**, *Ethics and Collaborative Lawyering: Why Put Old Hats on New Heads?*, 18 OHIO ST. J. ON DISP. RESOL. 505 (2003).

Responding to scholarly comments regarding the collaborative lawyer’s ethical responsibilities, the author argues that separate treatment of the collaborative lawyer may be warranted because different ethical rules are necessary when lawyers function in different roles. The author suggests that collaborative lawyering presents an even more compelling case for rejection of the adversarial zealous advocacy standard than third-party neutral situations.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

## {138} ETHICS: GENERAL

**Amy Farmer & Paul Pecorino**, Comment, *Bargaining With Voluntary Transmission of Private Information: Does the Use of Final Offer Arbitration Impede Settlement?*, 19 J.L. ECON. & ORG. 64 (2003).

The authors identified two features of final offer arbitration (FOA) that impede settlement in a bargaining session where the parties' asymmetric information forces the failure to settle. The informed party has an incentive to conceal private information while the uninformed party may choose to arbitrate all cases. The authors argued that both impediments are resolved if bargaining occurs after potentially binding offers have been submitted to the arbitrator.

## {44} ARBITRATION—GENERAL

## {73} SUBJ MATTER: GENERAL

## {123} SETTLEMENT: PRESSURES TO SETTLE

## {147} POWER IMBALANCE

**Trevor C.W. Farrow**, *Negotiation, Mediation, Globalization Protests and Police: Right Processes; Wrong System, Issues, Parties and Time*, 28 QUEEN'S L.J. 665 (2003).

Police forces in the U.S. and Canada are experimenting with a new proactive strategy to deal with anti-globalization protestors. They are turning to negotiation and mediation prior to protests. The strategy serves to purposes: protecting the safety of police, protestors, meeting delegates and the public, and facilitating lawful dissent.

## {1} NEGOTIATION—GENERAL

## {21} MEDIATION—GENERAL

## {134} DISPUTE PREVENTION

## {77} SUBJ MATTER: COMMUNITY

**Patrick V. Fiel, Jr.**, Case Commentary, *Contracts: Employment Agreement Providing Judicial Remedies for Disputes Supersedes Asset Purchase Agreement's Arbitration Clause*, 4 TRANSACTIONS 283 (2003).

This is a commentary on *Frounfelker v. Identity Group, Inc.*, dealing with arbitration of a dispute arising out of an employment agreement. The brief analysis recognizes the well established principle that parties cannot be forced to arbitrate claims they did not agree to arbitrate, and that a state's presumption of arbitration will not supercede a party's right to judicial remedies.

## {44} ARBITRATION—GENERAL

## {93} SUBJ MATTER: LABOR—GENERAL

## {126} REQUIRMENTS: CONTRACTUAL CLAUSES

**Howard Fink & June Carbone**, *Between Private Ordering and Public Fiat: A New Paradigm for Family Law Decision-making*, 5 J.L. FAM. STUD. 1 (2003).

This article examines the problems traditionally associated with litigation in the family context, and proposes that states adopt a more preventive approach to family disputes. The authors contend that by establishing a type of formal, contractual relationship between the two parties at the outset of the marriage relationship and by employing mediation to resolve disputes, the family relationship could benefit.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{133} COURT REFORMS

**Gregory Firestone et al.**, *Mediating Judicial Policy: Successful Mediation of a Family Court Rule on Domestic Violence and Mediation*, 42 FAM. CT. REV. 128 (2004).

This article reviews the successful mediation of a dispute over proposed rules to govern mediation of family law cases involving domestic violence. The authors conclude that the mediation provided (1) a confidential venue for disputing judges to respectfully disagree with one another, (2) an opportunity for collaborative problem solving, (3) an opportunity to reduce conflict among judicial colleagues, (4) a format for dialogue with other stakeholders, and (5) a greater degree of influence with regard to the outcome of the dispute.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Jay Folberg**, *Arbitration Ethics—Is California the Future?*, 18 OHIO ST. J. ON DISP. RESOL. 343 (2003).

The author explains the development of legislatively mandated arbitration ethics standards in California and how the movement may affect the rest of the nation. Specifically, the author discusses consumer cases where the disclosure requirements are most onerous for arbitrators affiliated with a national dispute resolution provider organization.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

**Julie M. Folger**, Note, *A Proposal to End the Stalemate in the Caspian Sea Negotiations*, 18 OHIO ST. J. ON DISP. RESOL. 529 (2003).

Following the breakup of the Soviet Union, the legal status of the oil rich Caspian Sea has been at the center of many regional disputes. This note examines current disputes over the delimitation of the Caspian Sea, discusses

how negotiation is being utilized to avoid armed conflict, and suggests that third party intervention is necessary after 10 years of fruitless negotiations.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

{114} 3D PARTY: PRACTICE OF LAW

**Lucy T. France & Timothy C. Kelly**, *Mandatory Arbitration of Civil Rights Claims in the Workplace: No Enforceability without Equivalency*, 64 MONT. L. REV. 449 (2003).

The policy of enforcing arbitration agreements between workers and employees must be balanced with the policy that ensures employees are not unlawfully discriminated against at work. The authors analyze how courts have balanced these interests, and concludes that while federal courts have extended the Federal Arbitration Act to almost all employment agreements, mandatory arbitration clauses are only enforceable if arbitration proceedings allow employees adequate substantive rights.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{128} REQUIREMENTS: STATUTORY OR RULES

{133} COURT REFORMS

**Mark Frankel & John Mitby**, *Think Like a Negotiator: Effectively Mediating Client Disputes*, 76 WIS. LAW. 11 (2003).

This article provides guidance for lawyers by discussing skills and techniques that will prepare lawyers for mediation. The article asserts that proper preparation for mediation and development of mediation skills can positively affect the outcome. The article discusses when to choose mediation, how to select a mediator, how to prepare as a lawyer, and how to prepare a client for mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**A. Michael Froomkin & Mark A. Lemley**, *ICANN and Antitrust*, 2003 U. ILL. L. REV. 1.

The authors examine possible antitrust violations by the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit organization appointed by the government to control the assignment of internet domain names. If the ICANN is subject to antitrust liability, one policy that must be reformed is its Uniform Dispute Resolution Policy, which requires arbitration of claims and currently functions to restrain competition.

{44} ARBITRATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{78} SUBJ MATTER: COMPUTER

{87} SUBJ MATTER: GOV'T

**Stephen P. Garvey**, *Restorative Justice, Punishment, and Atonement*, 2003 UTAH L. REV. 303.

Proponents argue that restorative justice is a superior way of dealing with victims and offenders because its goal is to restore the victim rather than punish the offender. This article, however, argues that to fully restore the victim, punishment cannot be eliminated from the equation. It is also argued that despite what the proponents of restorative justice claim, the elimination of punishment is not vital to the success of restorative justice.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{124} COMPARISONS: CROSS-CULTURAL

**Frederick Mark Gedicks**, *Restorative Justice and the Two-Track Establishment Clause*, 2003 UTAH L. REV. 523.

Restorative justice programs that include religious organizations may implicate the First Amendment Establishment Clause, as analyzed by two different doctrinal “tracks.” The neutrality analysis justifies government actions involving the dispensing of funds to religious groups as long as these benefits are made available to a broad, secularly defined beneficiary class. The separation principle analyzes the issue from a state government perspective. Whenever the government speaks, it cannot speak in a religious voice.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{124} COMPARISONS: CROSS-CULTURAL

{146} ORGANIZATION POLICIES & RULES

**Douglas P. Gerber**, *The Validity of Binding Arbitration Agreements and Children's Personal Injury Claims in Florida after Shea v. Global Trade Marketing Inc.*, 28 NOVA L. REV. 167 (2003).

In this article, the author utilizes the *Shea* case from Florida as a springboard to discuss the issues behind creating binding agreements for children in tort, negligence, and personal injury claims. The article first provides an overview of other state's case law in this area. The author then provides an in-depth discussion of the *Shea* case by addressing the facts of the case, its procedure and substance, and a critique of the court's opinion.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{110} SUBJ MATTER: TORTS—OTHER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES



**Peter Gerhart**, *The Two Constitutional Visions of the World Trade Organization*, 24 U. PA. J. INT'L. ECON. L. 1 (2003).

This article discusses the appropriate, constitutional role of the World Trade Organization (WTO). This article addresses the WTO's role as a negotiator in economic situations among states and within states. Furthermore, the article discusses the WTO's role as a negotiator of treaties. The article asserts that WTO should have a dual role; a role which is an external, participatory role, and a role as an internal, economic entity.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

**Tom Ginsburg**, Comment, *The Culture of Arbitration*, 36 VAND. J. TRANSNAT'L L. 1335 (2003).

Many people see arbitration as a place of convergence of legal cultures where practitioners from different backgrounds interchange and create new practices. This comment contests this cultural view and argues that convergence in the arbitral arena is driven by economic factors as the result of competition to capture network benefits. Overall, arbitral institutions evolve under competitive economic pressures to create a demand for a "culture" of common practice.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

**Robert J. Girouard**, Note, *Water Export Restrictions: A Case Study of WTO Dispute Settlement Strategies and Outcomes*, 15 GEO. INT'L ENVTL. L. REV. 247 (2003).

This note describes the advantages of resolving a dispute over quantitative restrictions on water exports in a non-adversarial forum. The author suggests resolving disputes through diplomatic negotiation in the World Trade Organization's Committee on Trade and Environment, formal consultation under the Understanding on Rules and Procedures Governing the Settlement of Disputes, and arbitration by a tribunal applying the Permanent Court of Arbitration's Optional Rules for the Settlement of Natural Resources and Environmental Disputes.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Ruth V. Glick**, *California Arbitration Reform: The Aftermath*, 38 U.S.F. L. REV. 119 (2003).

The author discusses the recent changes in California law governing arbitrators, including ethics standards, increased disclosures by arbitrators,

and increased the ability of parties to disqualify arbitrators. These changes, the author argues, have had unintended consequences because minor violations of the standards could result in a challenge to an award which otherwise could not be contested. The author proposes that a materiality requirement for violations and better protection for community-based programs would solve the problem.

{44} ARBITRATION—GENERAL

{138} ETHICS: GENERAL

{79} SUBJ MATTER: CONSUMER

{147} POWER IMBALANCE

**Lauren E. Godshall**, Note, *Making Space for Indigenous Intellectual Property Rights Under Current International Environmental Law*, 15 GEO. INT'L ENVTL. L.REV. 497 (2003).

The U'wa tribe is considering using intellectual property law against the government of Colombia and petroleum companies to protect their lands from oil exploration and drilling. An international arbitrator may resolve an intellectual property dispute but the process may be slow, expensive, and potentially unenforceable. The U'wa can use threats of potential international sanctions resulting from a decision unfavorable to Colombia as bargaining chips in negotiations with the government.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{87} SUBJ MATTER: GOV'T

{84} SUBJ MATTER: ENVIRONMENT

**Lee Goldman**, *Contractually Expanded Review of Arbitration Awards*, 8 HARV. NEGOT. L. REV. 171 (2003).

This article notes that, with arbitration gaining popularity as a more efficient and customizable method of resolving disputes, there is a growing concern about the limits of judicial review of arbitrated results. The author examines the arguments for and against expanding such review and concludes that clauses expanding it in individually negotiated contracts should be honored, but not those in standard form agreements.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Bonnie Blume Goldsamt**, *Hot Tips for Attorneys Whose Clients are in Mediation*, 224 N.J. LAW., Oct. at 43 (2003).

The author suggests ten tips for attorneys to consider in order to make the mediation process run smoothly. Suggestions include identifying interests,

preparing a confidential memo for the mediator, and advising the client on negotiation strategies, among other recommendations.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Stephanie B. Gordon**, Note and Comment, *Application of NAFTA's Investor-State Provisions: Is There a Remedy for the Punta Banda Eviction Chaos?*, 9 SW. J. L. & TRADE AM. 173 (2002).

The author examines the eviction of several American landowners from improperly deeded property in Mexico. These landowners have no remedy in Mexican courts, so they have sought relief through the North American Free Trade Agreement's Chapter Eleven, aimed at protecting investors from other member countries. The author argues that these landowners should be allowed to proceed to an arbitration hearing under Chapter Eleven because they are investors in Mexico.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Seth Grassman**, Note, *Direct Democracy as Cultural Dispute Resolution: The Missing Egalitarianism of Cultural Entrenchment*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 525 (2003).

This note explores the idea of direct democracy as a cultural dispute resolution mechanism. It claims that although direct democracy may seem superficially appealing, it is inherently flawed in that it leads to a cultural disenfranchisement of minority views and allows a majority to impose its cultural norms under a false claim of legitimacy. As a specific example, the article examines the use of direct democracy in California's political system.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

**Michael Z. Green**, *Opposing Excessive Use of Employer Bargaining Power in Mandatory Arbitration Agreements Through Collective Employee Actions*, 10 TEX. WESLEYAN L. REV. 77 (2003).

The author discusses solutions for employees to respond to and overcome power imbalances in the employment arbitration scenario. Given that employers can typically force employees to arbitrate disputes arising from the employment relationship, the author offers collective action as the most effective way to equalize the great power disparity inherent here.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{147} POWER IMBALANCE

**Tristin K. Green**, *Targeting Workplace Context: Title VII as a Tool for Institutional Reform*, 72 FORDHAM L. REV. 659 (2003).

This article outlines an increase in the filing of private class action lawsuits under Title VII of the Civil Rights Act that allege widespread employment discrimination facilitated by organizational structures, workplace cultures, and institutionalized practices. The author argues that these lawsuits represent the emergence of an important new form of private institutional reform litigation in which plaintiffs seek organizational change that will reduce the incidence of discrimination by individuals and groups in the workplace by altering the context in which decisions are made. According to the author, important in these lawsuits is the role of alternative dispute resolution mechanisms.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

**Daniel J.H. Greenwood**, *Restorative Justice and the Jewish Question*, 2003 UTAH L. REV. 533.

This article demonstrates the futility of religious-law based criminal law by examining the languages and traditions of a particular religious law system, that of Judaism. Torah law, like other religious manifestations of restorative justice, leads to the conclusion that ideal criminal law is impossible for humans to administer. The goal of restorative justice should simply be to reduce crime, an already difficult goal, rather than healing and restoring the world.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{125} COMPARISONS: HISTORICAL

**Lawrence M. Grosberg**, *Using Mediation to Resolve Residential Co-op Disputes: The Role of New York Law School*, 22 N.Y.L. SCH. J. INT'L & COMP. L. 129 (2003).

The author describes the goals and implementation of the TriBeCa Mediation Project, a law-related public service endeavor at New York Law School that encourages and provides the use of mediation in disputes among cooperative corporation (co-op) residents and between residents and co-op board members. This article presents a summary of the project, its consequences, rationale, logistics, and finally, the obstacles to implementing the program.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{90} SUBJ MATTER: RENTAL HOUSING

**Lawrence M. Grosberg**, *Using Mediation to Resolve Residential Co-op Disputes: The Role of New York Law School*, 46 N.Y.L. SCH. L. REV. 499 (2002-2003).

Recognizing an increase in the number of residential cooperative corporations and the number of disputes between co-op residents, the article discusses the rationale and preference for mediation in this setting. The author addresses the use of a non-binding pledge to use mediation as a means to encourage considerations of alternatives to litigation.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{90} SUBJ MATTER: RENTAL HOUSING

**Jared S. Gross**, *Recent Development*, *International Union v. Dana Corp.*, 18 OHIO ST. J. ON DISP. RESOL. 957 (2003).

This article analyzes a case in which Dana Corp. argued that *res judicata*, *stare decisis*, and collateral estoppel, should apply to arbitrations arising out of their collective bargaining agreement with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America. The court ruled against Dana Corp., recognizing the wide power given to arbitrators and arbitration agreements. The author examines the reasoning behind Dana's suit, and the effect of the holding.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{146} ORGANIZATION POLICIES & RULES

**Joanna L. Grossman**, *The Culture of Compliance: The Final Triumph of Form Over Substance in Sexual Harassment Law*, 26 HARV. WOMEN'S L.J. 3 (2003).

This article discusses the persistence of sexual harassment despite legal attempts to contain it. The author examines previous preventative efforts and various forms of alternative dispute resolution as means to combat this in the future, concluding that arbitration is preferable to mediation but litigation of such claims produces better results for victims. However, the author notes that there is little motivation for employers to create alternative dispute resolution programs to handle workplace problems.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

**Dora Marta Gruner**, *Note*, *Accounting for the Public Interest in International Arbitration: The Need for Procedural and Structural Reform*, 41 COLUM. J. TRANSNAT'L L. 923 (2003).

This note discusses international arbitration as a form of alternative dispute resolution, specifically focusing on how it is used to address public interest concerns. The author contends that the current international arbitration framework lacks adequate procedural protections for the public interest and

that in order to be effective, the arbitral system must continue to evolve to meet the needs of the ever-changing needs of the public.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{102} SUBJ MATTER: PUBLIC POLICY

**Andrew T. Guzman**, *Trade, Labor, Legitimacy*, 91 CAL. L. REV. 885 (2003).

The author examines the relationship between the World Trade Organization (WTO) and labor laws and groups. The author suggests that the issues arising between the WTO's pro-trade orientation and those who desire the protection of labor interests should best be settled by political negotiation and not through the WTO's quasi-judicial body. The author offers a possible solution through which these issues can be settled.

{1} NEGOTIATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

**Bill Haltom**, *But Seriously, Folks!: Coming Soon: My Cousin Vinny's Mediation*, 40 TENN. B.J., Jan. at 37 (2004).

This article is a commentary on the apparent lack of trial attorneys. The article suggests that most lawyers mediate and litigate, but fail to actually try cases. The article also suggests that most lawyers do not want to try cases, thus turning to other methods of settlement, such as mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Celeste M. Hammond**, *The (Pre)(As)Sumed "Consent" of Commercial Binding Arbitration Contracts: An Empirical Study of Attitudes and Expectations of Transactional Lawyers*, 36 J. MARSHALL L. REV. 589 (2003).

In this article, the author suggested that because attorneys misunderstand the basics of arbitration as a dispute resolution process, they are not prepared to advise their business clients about pre-dispute arbitration provisions. The implication is that when a lawyer is incorrect in his understanding, his client has not voluntarily agreed to arbitration and the agreement to arbitrate lacks the consent required to make a promise into a legally enforceable contract.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{134} DISPUTE PREVENTION

**Rebecca Hanner White**, *Arbitration and the Administrative State*, 38 WAKE FOREST L. REV. 1283 (2003).

This article provides an overview of how the Supreme Court handles arbitration of statutory claims, including employment claims. The article also outlines the guidelines used for judicial review of awards granted through arbitration, with emphasis on the difficulty of preserving substantive rights through such review. Finally, the article argues that the Court does not have a consistent standard for review of arbitral awards, thus complicating the review of awards.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

**Patricia Isela Hansen**, *Judicialization and Globalization in the North American Free Trade Agreement*, 38 TEX. INT'L L.J. 489 (2003).

This article discusses the North American Free Trade Agreement's (NAFTA) three separate mechanisms for the resolution of disputes by international tribunals. The author discusses the problems inherent in these dispute resolutions mechanisms and propounds possible solutions to rectify the problems.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Steven E. Harbour**, Note, *Restrictions on Post-Employment Competition by an Executive Under Georgia Law*, 54 MERCER L. REV. 1133 (2003).

Currently corporations are making efforts to restrict post-employment competition by executive employees. This article addresses the process of assessing levels of bargaining power in negotiations to determine whether there is evidence of separate consideration for the non-compete provision in employment contracts.

{1} NEGOTIATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Harvard Law Review**, *Federal Statutes and Regulations: C. Federal Arbitration Act*, 117 HARV. L. REV. 410 (2003).

This article describes the *Green Tree Financial Corp. v. Bazzle*. The case attempted to answer whether a court or an arbitrator should determine if an agreement permits class arbitration and whether anything in the Federal Arbitration Act preempts state law permitting class arbitration if the agreement is silent on the issue. The court failed to answer either question. The court also avoided the issue of unconscionability of "no-class action arbitration clauses" (NCAAC).

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

{133} COURT REFORMS

**Timothy Hedeem**, *Institutionalizing Community Mediation: Can Dispute Resolution "Of, By, and For the People" Long Endure?*, 108 PENN ST. L. REV. 265 (2003).

The author discusses the development of community mediation centers. He begins by examining the history of these centers and the two diverging paths that these centers are now taking. He then discusses attempts made to institutionalize community mediation centers and his concerns about such attempts.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{125} COMPARISONS: HISTORICAL

{103} SUBJ MATTER: PUBLIC UTILITIES

**Christopher J. Heffernan**, *Lessons Learned From Mediation: Tools of Dispute Resolution*, 36 MD. B. J., Aug. 20 (2003).

This article reflects on the author's personal experiences with mediation within Maryland in order to present thoughts on the values of mediation as a tool for resolving legal disputes as well as some factors that have a great impact on a mediation's success. While mediation is not the cure-all for every dispute and the factors enumerated are not all inclusive indicators of a successful mediation, the author argues that practitioners who can properly utilize the mediation process have a dispute resolution tool with almost limitless potential.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

**Timothy J. Heinsz**, *The 2000 Revision to the Uniform Arbitration Act: A Harbinger?*, 3 PEPP. DISP. RESOL. L.J. 435 (2003).

On August 3, 2000, the National Conference of Commissioners on Uniform State Laws unanimously passed major revisions to the Uniform Arbitration Act. Through various provisions, the Drafting Committee insured that arbitration in the 21st century could occur, even with updated technology. The author outlines the changes in the Revised Uniform Arbitration Act and urges passage of the RUAA.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{144} LEGISLATION

**Jean Hellwege**, *Ninth Circuit Declares One-Sided Arbitrations Presumptively Unconscionable*, 39 TRIAL, Aug. at 15 (2003).

This article discusses a recent Ninth Circuit unanimous opinion that found that mandatory arbitration clauses that grossly favor one side are unconscionable under California law and therefore unenforceable. The



impact of this decision is that employment-related arbitration will now be more scrutinized, and be considered unenforceable unless proven otherwise. Although only decided for the state of California, other jurisdictions with similar contract law will be affected.

{44} ARBITRATION—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{127} REQUIREMENTS: MANDATE TO USE

**Elena V. Helmer**, *International Commercial Arbitration: Americanized, "Civilized," or Harmonized?*, 19 OHIO ST. J. ON DISP. RESOL. 35 (2003).

The author examines the Americanization of international commercial arbitration by looking at five distinct areas: the increased participation by U.S. parties and attorneys in international arbitration, the use of the United States as a forum for arbitration, the American influence on other countries, and arbitration procedure. Although the author believes American arbitration has influenced international arbitration, the author stops short of calling the process an Americanization.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Deborah R. Hensler**, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165 (2003).

This article examines the history of alternative dispute resolution solely as it has developed in the legal world. She does not believe that litigation has disappeared. However, she does conclude that alternative dispute resolution has grown to limit the public's accessibility to the courts and that in the end public displays of conflict, as are found in litigation, are important to communities and their loss will be a detriment to society.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{77} SUBJ MATTER: COMMUNITY

{125} COMPARISONS: HISTORICAL

**Joseph R. Herkert**, *Biting the Apple (But Not Inhaling): Lessons from Engineering Ethics for Alternative Dispute Resolution Ethics*, 108 PENN ST. L. REV. 119 (2003).

The author is drawing a comparison between ethics in other professions and ethics in the field of alternative dispute resolution (ADR). He begins by examining the ethical standards of engineers understanding that one cannot make a direct comparison to ADR. He concludes by making

recommendations for ethics in the field of ADR based of the standards of ethics upheld for engineers.

{44} ARBITRATION—GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

{138} ETHICS: GENERAL

**Elizabeth Hill**, *Due Process at Low Cost: An Empirical Study of Employment Arbitration Under the Auspices of the American Arbitration Association*, 18 OHIO ST. J. ON DISP. RESOL. 777 (2003).

Based on a belief founded on little empirical support that arbitration robs employees of a right to trial, there has been opposition to the use of mandatory employee arbitration agreements. This article provides a comprehensive statistical account of what actually transpires during employment arbitration proceedings under the American Arbitration Association to demonstrate that mandatory arbitration offers affordable, substantial, measurable due process to employees who arbitrate under these types of agreements.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{127} REQUIREMENTS: MANDATE TO USE

**Ann C. Hodges**, *Can Compulsory Arbitration Be Reconciled With Section 7 Rights?*, 38 WAKE FOREST L. REV. 173 (2003).

The article reconciles compulsory arbitration with rights under section 7 of the National Labor Relations Act (NLRA). The author argues that compulsory employment agreements requiring waiving statutory or contractual rights under the NLRA should not be enforced. Compulsory arbitration agreements denying employees rights to bring class actions, joint claims, and claims for broad injunctions force employee waiver of section 7 rights and should be invalidated to preserve rights accorded in the NLRA.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{133} COURT REFORMS

**Elizabeth A. Hoffmann**, *Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies*, 28 L. & SOC. INQUIRY 691 (2003).

The author examines formal grievance practices of two taxicab companies, one privately-owned and one publicly-owned. The public company encouraged its employees to resolve disputes through the formal process, and emphasized the importance of individual rights. The private company, however, did not stress the importance of individual rights, and it had an effect on the work environment. More employees resigned or became

confrontational instead resolving problems using the formal grievance practices.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{146} ORGANIZATION POLICIES & RULES

**Justin P. Hofmeister**, Casenote, *Resolving the Dispute: The Ninth Circuit Brings Side Agreements into Scope in the Conflicts over Arbitration in Inlandboatmens' Union v. Dutra Group*, 36 CREIGHTON L. REV. 717 (2003).

In this note, the author addresses the *Inlandboatmens' Union v. Dutra Group* case from the Ninth Circuit. The issue in the case was whether side agreements must be arbitrated under collective bargaining agreements in the labor context. The author reviews the policy and the statutory and common law on the subject. Finally, the author analyzes the Ninth Circuit's decision in this context and concludes that the court's decision is consistent with prior law and policy on the subject.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Marlynn P. Howe**, *The Perilous Intersection of Rojas v. Los Angeles Superior Court and the Calderon Act—California Civil Code Section 1375*, 34 MCGEORGE L. REV. 571 (2003).

Participants confident that writings prepared by experts for mediation are privileged may have reason for concern. While the California Evidence Code gives broad confidentiality protections to mediation communications, the case of *Rojas v. Los Angeles Superior Court* may be threatening these protections. Dispute resolution may no longer be viewed as a viable alternative to litigation if the California Supreme Court upholds the lower court ruling which limits confidentiality in mediations.

{21} MEDIATION—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

{132} CONFIDENTIALITY

**R. William Ide III & Douglas H. Yarn**, *Public Independent Fact-Finding: A Trust Generating Institution for an Age of Corporate Illegitimacy and Public Mistrust*, 56 VAND. L. REV. 1113 (2003).

Public-independent fact finders can be useful to help vindicate companies falsely accused of wrongdoing, and help bring justice to companies who have strayed. However, there is a level of trust that must be endowed on the individuals who participate in fact finding missions and that trust is better established when there is an institutional structure around public-independent fact finders. Then, not only can public-independent fact finders be used

retroactively, they can also be used proactively to ward off threats of corruption.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{138} ETHICS: GENERAL

{132} CONFIDENTIALITY

**Andre R. Imbrogno**, *Arbitration as an Alternative to Divorce Litigation: Redefining the Judicial Role*, 31 CAP. U. L. REV. 413 (2003).

The author discusses recent jurisprudence and trends in divorce arbitration, arguing that courts are not focusing on the task of protecting children and disadvantaged spouses. The author argues that custody and visitation of children should never be submitted to arbitration, and that courts need to better ensure that one spouse is not dominating the issue of spousal support. Furthermore, the author argues that the use of arbitration in spousal support cases may overlook the potential unequal bargaining power of the parties, thus compromising the effectiveness of the arbitration process.

{44} ARBITRATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{102} SUBJ MATTER: PUBLIC POLICY

**Mark Ingram**, *Preparing Your Client for a Successful Child Custody Mediation*, 46 ADVOC., May at 13 (2003).

A high percentage of couples entering into child custody mediation are ill-prepared for the process. Many have little acquaintance with it and do not understand the role of the mediator. Counsel can play a vital role in helping their clients prepare for child custody mediation. Attorneys who can explain the mediation process and are comfortable acting as a supportive coach can greatly increase the likelihood of a workable agreement.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Carol L. Izumi & Homer C. La Rue**, *Prohibiting “Good Faith” Reports Under the Uniform Mediation Act: Keeping the Adjudication Camel Out of the Mediation Tent*, 2003 J. DISP. RESOL. 67.

The authors examine a narrow slice of the Uniform Mediation Act (UMA)—the prohibition on mediator communication to judges about a party’s good faith participation or “problem” behavior in mediation. The authors assert that the UMA strikes the correct balance by rejecting arguments in favor of mediator reports to judges and others about the actions and statements of parties during the mediation for the purpose of assessing and sanctioning “bad faith” behavior. Such reports allow mediators to report on whether parties are participating in the mediation in good faith, presumably in an effort to force uncooperative parties to conform. The authors argue that such

provisions undermine mediation and serve legal interests instead of mediation ones that unnecessarily entangle the systems and disserve both.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{132} CONFIDENTIALITY

{138} ETHICS: GENERAL

**Leander L. James**, *UM/UIM Arbitration in Idaho*, 46 ADVOC., Oct. at 18 (2003).

This article addresses arbitration in the context of uninsured motorist (UM) and underinsured motorist (UIM) claims. UM/UIM claims are first-party claims—claims made by the insured on his own automobile insurance policy. While UM/UIM arbitration is a specialized field of law within the broader category of automobile insurance litigation, the arbitration principles outlined here can also be applied to other types of arbitration, particularly first-party insurance arbitration.

{44} ARBITRATION—GENERAL

{91} SUBJ MATTER: INSURANCE

**Hai Jiang**, Casenote, *Do We Allow Contract Law to Administer Civil Rights Remedies?* Casenote on *Haskins v. Prudential Insurance Co.*, 2003 L. REV. M.S.U.-D.C.L. 251.

This note addresses what standard should be applied to employment discrimination claims in determining the enforceability of individual arbitration agreements. The author contends that the “Contract Law Standard” does not afford adequate protection against abuses in civil rights cases, whereas the “Appropriate Standard” applied by the First Circuit in *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith*.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Madeleine H. Johnson**, Student Work, *What’s a Mediator to do? Adopting Ethical Guidelines for West Virginia Mediators*, 106 W.VA. L. REV. 177 (2003).

While mediation has significantly expanded recently, its growth has not been accompanied by ethical standards to which mediators should be held. This article focuses on the lack of ethical guidance given to mediators in West Virginia. It discusses the steps other jurisdictions have taken to govern mediator conduct, and proposes that West Virginia should adopt ethical guidelines for mediators in general, and specifically for lawyer-mediators.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{132} CONFIDENTIALITY

## {138} ETHICS: GENERAL

**Paul Dayton Johnson, Jr.**, Note & Comment *Confidentiality in Mediation: What Can Florida Glean from the Uniform Mediation Act*, 30 FLA. ST. U. L. REV. 487 (2003).

The article focuses on the recently approved Uniform Mediation Act (UMA) and how it deals with confidentiality in mediation. In particular, it argues that Florida's Senate Bill 1226 should be enacted and that Florida should adopt the UMA approach of granting a limited mediator privilege, which protects the confidentiality of mediation by giving the mediator the right to refuse to testify and to prevent others from testifying about any medication communications.

## {21} MEDIATION—GENERAL

## {73} SUBJ MATTER: GENERAL

## {132} CONFIDENTIALITY

## {144} LEGISLATION

**Gregory Todd Jones**, *Fighting Capitulation: A Research Agenda for the Future of Dispute Resolution*, 108 PENN ST. L. REV. 277 (2003).

This article is a summary of the work done on research in alternative dispute resolution at the Pennsylvania State University Dickinson School of Law Dispute Resolution Symposium. Among other things, it discusses how one measures the standards of alternative dispute resolution programs. The author concludes that research in this area is important and while experts disagree about priorities, research about alternative dispute resolution and where it is headed must continue.

## {1} NEGOTIATION—GENERAL

## {73} SUBJ MATTER: GENERAL

## {125} COMPARISONS: HISTORICAL

**Journal on Dispute Resolution**, *Uniform Mediation Act Symposium: Uniform Mediation Act*, 2003 J. DISP. RESOL. 1.

This article discusses the Uniform Mediation Act—its purposes and goals, as well as how the UMA is tailored to promote effective mediations across the country.

## {21} MEDIATION—GENERAL

## {102} SUBJ MATTER: PUBLIC POLICY

## {104} SUBJ MATTER: REGULATORY

**David Kairys**, *Searching for the Rule of Law*, 36 SUFFOLK U. L. REV. 307 (2003).

The author explains the concept of the “rule of law” and how it plays an increasing role in the American legal system, politics, and pop culture. He

believes that “rule of law” should be classified as alternative dispute resolution.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

**John Kaplan**, Note, *Sprewell v. Golden State Warriors: National Basketball Association*, 226 F.3d 979 (9th Cir. 2001), *reh’g en banc denied*, 275 F.3d 1187 (9th Cir. 2001), 13 SETON HALL J. SPORT L. 117 (2003).

The author reviews the case of basketball player Latrell Sprewell, who was suspended after attacking his coach during a practice. The author discusses the claims Sprewell brought in challenging the decision of an arbitrator, and argues that this case may provide a precedent for others bound by collective bargaining agreements who seek to pursue their cases using state law instead of federal law.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{94} SUBJ MATTER: LABOR—DISCRIMINATION

**Alan S. Kaplinsky & Mark J. Levin**, Note, *The Gold Rush of 2002: California Courts Lure Plaintiffs’ Lawyers (But Undermine Federal Arbitration Act) by Refusing to Enforce “No-Class Action” Clauses in Consumer Arbitration Agreements*, 58 BUS. LAW. 1289 (2003).

The authors report that a series of three decisions by California courts expose banks and lenders with no-class action arbitration agreements to the possibility of class actions in California federal courts. The authors believe that these decisions are fundamentally flawed because they are incompatible with the Federal Arbitration Act.

{44} ARBITRATION—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Susan L. Karamanian**, *Overstating the “Americanization” of International Arbitration: Lessons from ICSID*, 19 OHIO ST. J. ON DISP. RESOL. 5 (2003).

In this article, the author addresses the Americanization of dispute resolution processes by examining mediation through the International Centre for the Settlement of Investment Disputes (ICSID). The author proposes three varying levels of Americanization and then examines these levels in light of the international commercial arbitrations taking places at the ICSID. The author concludes that the effects of American dispute resolution is not as widespread or pervasive as some would believe.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT’L

{124} COMPARISONS: CROSS-CULTURAL

**Nicole Karas**, Note, *EEOC v. Luce and the Mandatory Arbitration Agreement*, 53 DEPAUL L. REV. 67 (2003).

This note discusses the recent Ninth Circuit case *EEOC v. Luce* and its role in undermining the right of an employee to litigate employment discrimination claims. It also explores the history of arbitration in general and then, more specifically, the Federal Arbitration Act (FAA). In addition, it highlights the more relevant cases regarding arbitration that serve as a backdrop to *Luce*.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Pamela Karlan**, *Disarming the Private Attorney General*, 2003 U. ILL. L. REV. 183.

In this article, the author argues that the Supreme Court has expanded the scope of sovereign immunity and compelled arbitration. At the same time, the Supreme Court has contracted the availability of implied rights of action and attorney's fees. According to the author, the overall effect of the Court's decisions regarding these matters has been to restrict the enforcement of basic antidiscrimination requirements.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{102} SUBJ MATTER: PUBLIC POLICY

**Okuma Kazutake**, *Party Autonomy in International Commercial Arbitration: Consolidation of Multiparty and Classwide Arbitration*, 9 ANN. SURV. INT'L & COMP. L. 189 (2003).

The author discusses using arbitration for dispute settlements in international commercial transactions and analyzes cases from the United States, United Kingdom, and France. The U.S. courts have not uniformly decided on the consolidation of arbitration for multiparty and classwide arbitrations, but the tendency of U.S. case law seems favorable to expanding party autonomy, which would allow parties themselves to decide the method and scope of arbitration through a clearly written arbitration agreement.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL

{124} COMPARISONS: CROSS-CULTURAL

**Judith M. Keegan**, *Appellate Mediation Arrives in Alabama*, 65 ALA. LAW., Nov. at 31 (2003).

This short article summarizes Alabama's appellate level mediation program and details its advantages such as cost savings, speed, finality, flexibility, maintenance of relationships, and avoidance of precedent.

{21} MEDIATION—GENERAL



## {73} SUBJ MATTER: GENERAL

**Rebecca Keim**, *Filling the Gap Between Morality and Jurisprudence: The Use of Binding Arbitration to Resolve Claims of Restitution Regarding Nazi-Stolen Art*, 3 PEPP. DISP. RESOL. L.J. 295 (2003).

The author discusses the controversy that the loss of artwork has recently created as Holocaust survivors and their families try to retrieve Nazi-stolen artwork. The expense and inconvenience of lawsuits, as well as the complex nature of claims and the unpredictability of court decisions, has led to dissatisfaction with the courts as a forum for resolving disputes regarding the return of looted artwork. Such discontent with the adjudicative system has created the desire and the need to find alternative methods. The author argues for the creation of international law or a treaty designating arbitration as the forum to resolve claims of stolen art resulting from the Holocaust.

## {44} ARBITRATION—GENERAL

## {92} SUBJ MATTER: INT'L

## {127} REQUIREMENTS: MANDATE TO USE

**Kevin M. Kennedy & Bethany Appleby**, *Green Tree Financial Corp. v. Bazzle: A New Day for Class Arbitrations?*, 23 FRANCHISE L.J. 84 (2003).

The U.S. Supreme Court recently held that an arbitrator has the discretion to certify a class for arbitration when an arbitration clause is silent on class treatment. This article addresses the potential problems faced by a franchisor whose agreements are silent on class treatment and offers practical suggestions on how franchisors can persuade arbitrators to reject class arbitrations, noting that the decision is unlikely to affect a franchisor's ability to insist that disputes be resolved in individual cases where an arbitration clause expressly forbids class arbitration.

## {44} ARBITRATION—GENERAL

## {73} SUBJ MATTER: GENERAL

**Claire Kennedy-Wilkins**, Note, *Playing Ostrich with the FAA's History: The Scope of Mandatory Arbitration of Employment Contracts*, 54 HASTINGS L.J. 1593 (2003).

The author notes the rise of mandatory arbitration clauses in employment contexts and considers whether such clauses are statutorily permissible given the Federal Arbitration Act's provision against these in contracts of workers engaged in foreign or interstate commerce. The author concludes that the Supreme Court, in declaring the clauses enforceable, has misinterpreted the Federal Arbitration Act and Congress should reassert that they are unenforceable in cases of interstate employment.

## {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

## {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

## {126} REQUIREMENTS: CONTRACTUAL CLAUSES

## {133} COURT REFORMS

**Robert B. Kershaw**, *Mandatory Binding Arbitration—Goliath's New Offense*, 36 Aug. MD. B. J. 28 (2003).

The traditional benefits of binding arbitration clauses in contracts include, informality, speed, and reduced costs. This article argues that such reasons are often illusory. The author argues that these clauses are designed and intended to isolate individual claims and avoid class action litigation. These true goals will limit attorney interest in taking the case based upon the lack of contingent fees, and confidentiality requirements will limit notice of other potential class claims. Overall, the author argues that courts should be hesitant to overturn possible class actions because of the presence of an arbitration agreement as the results could be more harmful in the long run.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Kwang-Rok Kim**, *Settling Business Disputes with North Koreans in the Advent of the External Economic Arbitration Law*, 16 TRANSNAT'L LAW. 401 (2003).

The author reviews North Korea's External Economic Arbitration Law (EEAL), which mandates that international business disputes be settled in the business arbitration system as opposed to the national arbitration system. Following an overview of EEAL, it is then distinguished from other North Korean laws, highlighting both its purposes and basic functions. The article stresses that the arbitration system is an efficient time and money saver for international business disputes.

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

{92} SUBJ MATTER: INT'L

**William N. King**, *Department: Lawyers Helping Lawyers: Lawyer Fee Dispute Resolution Program*, 51 LA. BAR. J., July at 32 (2003).

This article acts as an instructional resource to attorneys who have clients with fee disputes. It tells lawyers how to begin fee dispute arbitration proceedings, and gives information about costs, arbitrators, the proceeding, limited appeals, and collection of awards. The described fee dispute arbitration program is encouraged as an effort to resolve client conflicts quickly and efficiently.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Lee Korland**, Comment, *What an Arbitrator Should Investigate and Disclose: Proposing a New Test for Evident Partiality Under the Federal Arbitration Act*, 53 CASE W. RES. L. REV. 815 (2003).

Parties hoping to challenge a commercial arbitration award sometimes claim that a supposedly neutral arbitrator was partial to the other party. Although the Federal Arbitration Act does not provide standards of conduct, major arbitration associations have established ethical guidelines. Arbitrators should timely disclose conflicts of interests in order to avoid the later investigations by disappointed parties. The author shows that there are conflicting decisions of lower courts as to whether arbitrators have a duty to investigate whether any potential conflict exist, and argues that a new test should be implemented that encourages investigation and provides for an affirmative defense if an arbitrator is challenged as partial

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{128} REQUIREMENTS: STATUTORY OR RULES

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

**Robert M. Kossick, Jr. & Marcelo Bergman**, *The Enforcement of Local Judgments in Mexico: An Analysis of the Quantitative & Qualitative Perceptions of the Judiciary & Legal Profession*, 34 U. MIAMI INTER-AM. L. REV. 435 (2003).

The authors address the difficulty of enforcing judgments in Mexico, and offers suggestions for improvement. It notes the history of unsuccessful use of mediation and negotiation in Mexico. They recommend a more formal framework to make mediation and negotiation a more effective tool with which to improve the enforcement of judgments. They suggest that mediation and negotiation will help enforce judgments by sparing parties the expense, time, and trouble of litigation.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Andrew P. Lamis**, *The New Age of Artificial Legal Reasoning as Reflected in the Judicial Treatment of the Magnuson-Moss Act and the Federal Arbitration Act*, 15 LOY. CONSUMER L. REV. 173 (2003).

The author argues that the Magnuson-Moss Act makes clear that privately created dispute resolution mechanisms inserted into product warranties cannot ultimately foreclose consumers' access to our courts of law. Nonetheless, certain courts have enforced binding arbitration clauses in product warranties governed by the Act. This article argues that because of the text, legislative history, and purposes of the Act, these courts should have declared such binding arbitration provisions illegal.

{44} ARBITRATION—GENERAL  
 {79} SUBJ MATTER: CONSUMER  
 {133} COURT REFORMS  
 {144} LEGISLATION

**Carolyn B. Lamm & Jocelyn A. Aqua**, *Defining the Proper Party—Who is a Proper Party in an International Arbitration Before the American Arbitration Association and Other International Institutions*, 34 GEO. WASH. INT'L L. REV. 711 (2003).

The authors consider various situations in which a non-signatory may be compelled to participate in an international arbitration and examine recent proceedings where challenges arose concerning the participation of a party, especially in the context of arbitral proceedings applying American Arbitration Association's International Arbitration Rules. Additionally, the authors offer many examples of cases in which an arbitration clause was extended to entities that did not enter into any contract and thus would not normally be considered a proper party to a dispute.

{44} ARBITRATION—GENERAL  
 {92} SUBJ MATTER: INT'L

**Sarah E. Larson**, Note, *An Examination of the Broad Scope of the Federal Arbitration Act and Binding Mandatory Consumer Arbitration Agreements: Not the Answer to Racial Bias in the United States Legal System*, 24 HAMLINE J. PUB. L. & POL'Y 293 (2003).

The author argues that the current practice of binding mandatory consumer arbitration does not end the racial inequality that has historically existed in the United States legal system. The author comments that binding mandatory consumer arbitration agreements are not the answer to the racial inequalities in the American legal system, and as a result the Federal Arbitration Act should be reformed to take into consideration these issues.

{44} ARBITRATION—GENERAL  
 {79} SUBJ MATTER: CONSUMER  
 {133} COURT REFORMS  
 {144} LEGISLATION

**Robert Lawton**, Student Survey, *Insurance Federation of Pennsylvania, Inc. v. Koken: An Individual's Constitutional Right to a Jury Trial Is Restricted*, 12 WIDENER L.J. 221 (2003).

The Commonwealth Court of Pennsylvania recently upheld the Insurance Department of Pennsylvania's authority to mandate arbitration in the case of underinsured and uninsured motorist coverage disputes. This seems to directly conflict with every individual's constitutional right to a jury trial. This survey analyzes how the court came to the decision it did, the

ramifications of the court's decision, and its possible impact on Pennsylvania residents in the future.

{44} ARBITRATION—GENERAL

{91} SUBJ MATTER: INSURANCE

{127} REQUIREMENTS: MANDATE TO USE

{128} REQUIREMENTS: STATUTORY OR RULES

**June Lehrman**, *On the Threshold of Arbitration: Whether a Court or Arbitrator Decides a Threshold Arbitration Issue Hinges on Whether the Issue Involves a Question of Arbitrability*, 26 L.A. LAW., Dec. at 20 (2003).

Beginning with the United States Supreme Court's "landmark" decision in *First Options of Chicago, Inc. v. Kaplan*, which sketched the broad outlines of a methodology to distinguish arbitral from judicial powers over "gateway" or "threshold" issues, the author discusses differing approaches as to who should decide threshold issues in the arbitral context. The "arbitrability" of the dispute is profoundly important and the differing approaches taken by courts have resulted in the proliferation of an extraordinarily complex and nuanced patchwork of doctrine that sometimes seems far removed from reality.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Michael H. LeRoy & Peter Feuille**, *Judicial Enforcement of Predispute Arbitration Agreements: Back to the Future*, 18 OHIO ST. J. ON DISP. RESOL. 249 (2003).

The authors discuss the increased use of mandatory employment arbitration agreements and the Supreme Court's decisions enforcing such agreements. According to the authors, employers who rely on the proarbitration precedent may be discouraged to see empirical evidence that lower courts often reserve the power to void or reform agreements where procedural or substantive abuses occur.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{147} POWER IMBALANCE

**Timothy P. Lester**, *Globalized Automatic Choice of Forum: Where Do Internet Consumers Sue?: Proposed Article 7 of the Hague Convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters and its Possible Effects on e-Commerce*, 9 NEW ENG. J. INT'L & COMP. L. 431 (2003).

The author addresses Article 7 of the proposed Hague Convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters. He suggests that the proposed convention is missing any discussion

of alternative dispute resolution procedures and contends that such measures could lead to a better resolution of disputes resulting from internet transactions. He suggests that any such dispute should first be addressed through some form of good faith alternative dispute resolution process.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

{78} SUBJ MATTER: COMPUTER

**Adina Levinen**, Note, *A Dark State Of Criminal Affairs: ADR Can Restore Justice To The Criminal "Justice" System*, 24 HAMLINE J. PUB. L. & POL'Y 369 (2003).

The author argues that the American criminal justice system is no longer just, because a system that discriminates against people of color simply cannot be called "a fair and proper administration of the law," the very definition of "justice." Alternative dispute resolution (ADR) provides solutions for restoring justice to the criminal adjudicative system of the United States. ADR can provide a cure for the infection of racial bias in the criminal system by changing the system's very structure. The author suggests through mediation and arbitration, ADR poses alternatives to the traditional adversary system of criminal adjudication, a system that is sorely failing to serve justice.

{44} ARBITRATION—GENERAL

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

**Lester J. Levy**, *FAQ on Bankruptcy Mediation*, 22 AM. BANKR. INST. J., Apr. at 1 (2003).

By answering ten frequently asked questions, the author discusses the use of mediation in bankruptcy cases and how it can shorten the amount of time and reduce the transactional costs incurred in prosecuting actions. Mediation has been successful in multiple-claims proceedings such as class actions and mass torts and thus, with the continued rise in large bankruptcy filings, courts and the financial community are well served by this same process.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{87} SUBJ MATTER: GOV'T

{123} SETTLEMENT: PRESSURES TO SETTLE

**Tracy Lipinski**, Note, *Major League Baseball Players Ass'n v. Garvey Narrows the Judicial Strike Zone of Arbitration Awards*, 36 AKRON L. REV. 325 (2003).

The article evaluates the Supreme Court's decision in *Major League Baseball Players Ass'n v. Garvey* regarding the scope of judicial review of labor arbitration awards in the context of major league baseball. The author

contends that the Court should have adopted the “completely irrational” standard which would have left intact the narrow standard of review while allowing for awards not based on reason to be vacated.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{93} SUBJ MATTER: LABOR—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Daniel G. Lloyd**, *The Magnuson-Moss Warranty Act v. the Federal Arbitration Act: the Quintessential Chevron Case*, 16 LOY. CONSUMER L. REV. 1 (2003).

This article argues that the early judicial approach to the relationship between Magnuson-Moss and the Federal Arbitration Act is flawed because of its continued ignorance of the proper deference owed to the Federal Trade Commissions’s regulatory interpretations of Magnuson-Moss.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**James S. Lochead**, *An Upper Basin Perspective On California’s Claims To Water From The Colorado River Part II: The Development, Implementation And Collapse Of California’s Plan To Live Within Its Basic Apportionment*, 6 U. DENV. WATER L. REV. 318 (2003).

This article chronicles the negotiations among the states of the Colorado River Basin, the federal government, and various water agencies within Southern California concerning California’s overuse of water allocated to it by law from the Colorado River. Unfortunately, after more than ten years of negotiations, the California agencies were unable to finalize the agreements necessary to effectuate the California Plan.

{1} NEGOTIATION—GENERAL

{103} SUBJ MATTER: PUBLIC UTILITIES

{87} SUBJ MATTER: GOV’T

**R. Jake Locklear**, Note, *Arbitration in Olympic Disputes: Should Arbitrators Review the Field of Play Decisions of Officials?*, 4 TEX. REV. ENT. & SPORTS L. 199 (2003).

This article discusses arbitration as the preferred method of Olympic dispute resolution. In arguing that arbitrators should be permitted to review field-of-play decisions of officials in Olympic contests, the article analyzes the Lindland Sieracki wrestling dispute of the 2000 Sydney games. The author argues that the same reasoning underlying deference by courts to awards of an arbitrator applies to the field of play decisions of Olympic officials.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

**Andrea Lockridge**, Note, *The Silent Treatment: Removing the Class Action from the Plaintiff's Toolbox Without ever Saying a Word*, 2003 J. DISP. RESOL. 255.

This article examines the tension that exists between plaintiffs seeking to use class action lawsuits to consolidate claims and defendants who desire to avoid the effects of a judgment reflecting the losses of many. The author looks at the effects of permitting an arbitration clause that would be "silent" with respect to class-wide arbitration, thus limiting plaintiffs in efforts to bring a class action suit.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{147} POWER IMBALANCE

**E. Andrew Long**, Comment, *Protection of Minority Environmental Interests in the Administrative Process: A Critical Analysis of the EPA's Guidance For Complaints Under Title VI*, 39 WILLAMETTE L. REV. 1163 (2003).

Response to racial environmental discrimination has grown over the last several decades into the environmental justice movement. The Environmental Protection Agency addresses community challenges of state environmental decisions under Title VI of the Civil Rights Act of 1964, and urges resolving such complaints through informal/voluntary alternative dispute resolution procedures. However, the author argues that in the informal setting of negotiation/mediation, experienced negotiators for the discriminator may be advantaged as they face inexperienced low-income residents of the complainant community.

{21} MEDIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{76} SUBJ MATTER: CIVIL RIGHTS

{77} SUBJ MATTER: COMMUNITY

**Carlos Scott Lopez**, *Reformulating Native Title in Mabo's Wake: Aboriginal Sovereignty and Reconciliation in Post-Centenary Australia*, 11 TULSA J. COMP. & INT'L L. 21 (2003).

This article examines the injustices done to the native people of Australia and the Australian government's failed attempts to rectify the situation. The author looks to alternative means of reconciliation, and, after examining a variety of ways to accomplish this goal, offers a solution of implementing conjoint sovereignty and mandatory easements as a possibility to stimulate the parties to reconcile the past wrongs.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

{144} LEGISLATION



**Erik Luna**, *Punishment Theory, Holism, and the Procedural Conception of Restorative Justice*, 2003 UTAH L. REV. 205.

Several punishment theories exist, and each theory sharply criticizes the others, in an attempt to gain validity. Restorative justice is an alternative to traditional punishment theories, but it is subject to the same harsh criticism as the others. This article examines the various criticisms of different punishment theories and concludes that a holistic approach such as the one that restorative justice offers can help harmonize different theories that seem irreconcilable.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{125} COMPARISONS: HISTORICAL

{133} COURT REFORMS

**Joseph E. Magri**, *New Media—New Rules: The Digital Performance Right and Streaming Music over the Internet*, 6 VAND. J. ENT. L. & PRAC. 55 (2003).

Compromise between the Recording Industry Association of America (RIAA) and webcasters is possible if context is provided to the controversy and issues are clarified regarding copyrighted materials and the Internet. Under current law, royalty rates and terms are determined by voluntary agreement among affected parties and if necessary, through compulsory arbitration pursuant to the U.S. Copyright Act. Arbitration was necessary in the rate setting process for webcasters, as interested parties were unable to negotiate an agreement.

{44} ARBITRATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{144} LEGISLATION

**Martin H. Malin**, *Ethical Concerns in Drafting Employment Arbitration Agreements After Circuit City and Green Tree*, 41 BRANDEIS L.J. 779 (2003).

The author suggests that in the task of drafting the employment arbitration agreement, the lawyer is creating the system that will adjudicate employees' public law claims. So, the employer's lawyer almost completely controls the employees' access to justice. However, in drafting these arbitration agreements, lawyers will face conflicts between their duties as advocates for their clients and their duties as officers of the court.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{138} ETHICS: GENERAL

{151} ROLE OF LAWYERS

**Brian J. Malloy**, Note, *Binding Interest Arbitration in the Public Sector: A "New" Proposal for California and Beyond*, 55 HASTINGS L.J. 245 (2003).

Binding interest arbitration has become a popular tool for resolving potentially debilitating strikes. Although California's statewide venture into binding interest arbitration has failed, there remain several avenues by which California public entities can enact binding interest arbitration legislation. The author argues that California should adopt a statute or ordinance that limits binding arbitration to "essential" employees and provides a list of enumerated statutory standards that an arbitrator is to consider.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

**Lewis L. Maltby**, *Out of the Frying Pan, into the Fire: The Feasibility of Post-Dispute Employment Arbitration Agreements*, 30 WM. MITCHELL L. REV. 313 (2003).

Many Americans are required to agree to mandatory employment arbitration. Congress is considering legislation outlawing such agreements, and the likely impact of such legislation would be to harm the employees it intended to help. Data and research show that most employees will not be able to secure their employer's agreement to arbitrate once the dispute arises, and that such cases rarely support contingent fee litigation, leaving many employees with no access to justice.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{144} LEGISLATION

**Fabrizio Marrella**, *Choice of Law in Third-Millennium Arbitrations: The Relevance of the UNIDROIT Principles of International Commercial Contracts*, 36 VAND. J. TRANSNAT'L L. 1137 (2003).

This article discusses the implication of the International Institute for the Unification of Private Law (UNIDROIT) Principles for contemporary private international law applied to arbitration. The author argues that the the UNIDROIT principles will help make international arbitration consistent and more predictable because arbitrators will have a common body of law to apply to the arbitration before them.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL

**Edward A. Marshall**, *Title VII's Participation Clause and Circuit City Stores v. Adams: Making the Foxes Guardians of the Chickens*, 24 BERKELEY J. EMP. & LAB. L. 71 (2003).

This article examines the Supreme Court's recent decision in *Circuit City Stores, Inc. v. Adams*, signifying an affirmation of a principle inimical to the effectiveness of Title VII. The article evaluates the potential effects of the Court's willingness to enforce compulsory arbitration of Title VII disputes

“in light of the exclusion of participation in internal dispute resolution mechanisms from the scope of the statute’s participation clause.” The author believes that Congress must unequivocally extend to arbitration complainants the same retaliation protections traditionally enjoyed by employees in the judicial context under Title VII’s participation clause.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{144} LEGISLATION

**Bobby Marzine Harges**, *An Analysis of Expert Testimony in Louisiana State Courts after State v. Foret and Independent Fire Insurance Company v. Sunbeam Corporation*, 49 LOY. L. REV. 79 (2003).

This article addresses Federal Rule of Evidence 702 and *Daubert v. Merrill Dow Pharmaceuticals*. The author notes two Louisiana cases that have adopted the holding in *Daubert*, *State v. Foret*, and *Independent Fire Insurance Company v. Sunbeam Corporation*. Noting that a majority of cases settle before litigation, he contends that the requirement that scientific testimony must be relevant and reliable results in increased bargaining power for plaintiffs in mediation.

{21} MEDIATION—GENERAL

{147} POWER IMBALANCE

**Richard A. Matasar**, *Skills and Values Education: Debate About the Continuum Continues*, 22 N.Y.L. SCH. J. INT’L & COMP. L. 25 (2003).

This article discusses the MacCrate Report’s recommendations to improve legal education and preparation, and the successes and failures of its implementation. Alternative dispute resolution (ADR) procedures were recognized in this report as an important skill for new lawyers. However, the author contends that many schools have coursework in ADR, but most law schools do not provide sufficient instruction in ADR procedures.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{83} SUBJ MATTER: EDUCATION

**John M. McCabe**, *Uniformity in ADR: Thoughts on the Uniform Arbitration Act and the Uniform Mediation Act*, 3 PEPP. DISP. RESOL. L.J. 317 (2003).

This note comments on the importance of both mediation and arbitration by reflecting on the recent efforts of to complete a comprehensive revision of the Uniform Arbitration Act and a first version of the Uniform Mediation Act. It discusses how these acts are drafted to both enhance the robust use of these processes while preserving the basic values of fundamental fairness that participants in these processes have come to expect.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

## {128} REQUIREMENTS: STATUTORY OR RULES

**John M. McCoy III**, Note, *The Admissibility of Arbitration Depositions at Trial Depositions from a Prior Contractual Arbitration Can Be a Source of Valuable Evidence*, 26 L.A. LAW., June at 13 (2003).

Noting an absence of statutory provisions or case law addressing the issue of whether prior contractual arbitration depositions are admissible in later litigation, the author argues through analogy to similar case law and statutes that such evidence should be admissible and is valuable.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**John P. McLaughlin & Patrick J. Harvey**, Comment, *Betancourt and the Narrow Certiorari Scope of Review of Appeals from Act 111 Grievance Arbitration Awards: Its Time Has Already Come and Gone*, 5 U. PA. J. LAB. & EMP. L. 427 (2003).

The article addresses the scope of review Pennsylvania courts employ when reviewing labor grievance appeals. A recent Pennsylvania decision employed a narrow certiorari scope of review, rather than using the “essence” test. The author argues that a narrow scope of review is appropriate for interest arbitration in creating or amending collective bargaining agreements. However, the narrow cert standard has no place in reviewing grievance arbitration awards due to legislative intent.

{44} ARBITRATION—GENERAL

{133} COURT REFORMS

**Hannah L. Meils**, *A Lesson from NAFTA: Can the FTAA Function as a Tool for Improvement in the Lives of Working Women?*, 78 IND. L.J. 877 (2003).

This article describes the lessons learned from North American Free Trade Agreement and how we can apply them toward the new Free Trade Area of the Americas (FTAA) agreement in order to achieve a more women’s labor friendly trade agreement. Current dispute procedures for violations of labor rights contained in the North American Agreement on Labor Cooperation (NAALC) include arbitration, mediation, and non-binding recommendation procedures. The author provides recommendations for the FTAA to improve labor conditions for women.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

**Matthew T. Mitchell**, Casenote, *Alternative Dispute Resolution—Employment Discrimination Claims—An Employee’s Arbitration Agreement Will not Preclude the Equal Employment Opportunity Commission From*

*Pursuing Victim-Specific Judicial Relief*. EEOC v. Waffle House, Inc., 122 S. Ct. 754 (2002), 33 CUMB. L. REV. 739 (2003).

The author states that in the past few decades the Supreme Court, for better or for worse, has become extremely receptive to the strengthening of the Federal Arbitration Act at the expense of the victim's right to a judicial proceeding. The author believes that by permitting the Equal Employment Opportunity Commission (EEOC) to pursue victim-specific relief, however, the Court in *Waffle House* delivered a verdict for the victims of discrimination, for the EEOC, and, most importantly, for the judicial forum.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{104} SUBJ MATTER: PUBLIC POLICY

**Robert H. Mnookin**, *Strategic Barriers to Dispute Resolution: A Comparison of Bilateral and Multilateral Negotiations*, 8 HARV. NEGOT. L. REV. 1 (2003).

This article addresses why negotiations often fail even when there are possible resolutions that would better suit the disputants. The author analyzes strategic barriers in the context of two-party negotiations, as well as in the multiparty bargaining context. The author also explores how procedural rules may affect the outcome of multilateral negotiations, specifically analyzing the use of the "sufficient consensus" standard in the South Africa and Northern Ireland multiparty negotiations.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

**Brent C. Moberg**, Comment, *Dispute Resolution in Intercollegiate Athletics*, 4 TEX. REV. ENT. & SPORTS L. 181 (2003).

The author expresses his concern for the absence of alternative dispute resolution (ADR) in intercollegiate athletics. ADR is utilized regularly in professional sports and amateur sports organizations. According to the author, the benefits of establishing ADR process in intercollegiate athletics are numerous. Dispute resolution techniques would empower players to communicate and generate their own solutions and would also secure a degree of privacy and confidentiality in coaching contracts, national letters of intent, and student-athlete scholarship agreements

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

**Michael Moffitt**, *Ten Ways to Get Sued: A Guide for Mediators*, 8 HARV. NEGOT. L. REV. 81 (2003).

The author makes a list of ten ways mediators could get sued and offers ways for mediators to avoid those problems. The author points out that lawsuits regarding mediation are rare, but that they are possible. Some of the situations include failing to disclose a conflict of interest, breaching specific contractual provisions, breaching confidentiality, inflicting emotional distress, and committing fraud.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

{114} 3D PARTY: PRACTICE OF LAW

**Eric J. Mogilnicki & Kirk D. Jensen**, *Arbitration and Unconscionability*, 19 GA. ST. U. L. REV. 761 (2003).

The authors rebut Professor Carrington's contention in *Unconscionable Lawyers*, that arbitration is routinely unconscionable. The authors explore the conscionability of various arbitration provisions and establish that unconscionable provisions are unenforceable. They ultimately conclude that, given the potential benefits of arbitration, the legal community should continue to improve arbitration processes. According to the authors, lawyers who advise clients to consent to arbitration clauses do not violate any ethical duties, because arbitration can provide substantial benefits not available by court adjudication.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

{147} POWER IMBALANCE

**Margaret Moses**, *Can Parties Tell Courts What to Do? Expanded Judicial Review of Arbitral Awards*, 52 KAN. L. REV. 429 (2004).

The author examines two recent interpretations of the Federal Arbitration Act (FAA) with respect to whether parties are permitted to contractually expand the grounds on which a court can review an arbitral award. After examining both interpretations, the author concludes that the FAA likely permits expanded judicial review.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{149} QUALITY CONTROL

**Thomas J. Moyer & Emily Stewart Haynes**, *Mediation as a Catalyst for Judicial Reform in Latin America*, 18 OHIO ST. J. ON DISP. RESOL. 619 (2003).

The article analyzes the inability of the native judiciary structures to deal with the current state of unrest in Latin America and examines the prospect of mediation programs as a tool for judicial reform. The authors propose that

mediation can help parties circumvent corruption and reduce inefficiencies in the court systems. Furthermore, these programs can foster more participatory societies by educating the populace, changing societal modes of communication, and encouraging democratic means of problem-solving.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

{133} COURT REFORMS

**Sean D. Murphy**, Comment, *Contemporary Practice of the United States Relating to International Law: "Buy America" Provision Consistent with NAFTA National-Treatment Standard*, 97 AM. J. INT'L L. 442 (2003).

The author reports the results of arbitration between a Canadian-based steel corporation and the United States which arose after a conflict regarding the application of the "Buy America" requirements to the Canadian steel corporation. The arbitrator found that the Canadian corporation was subject to the same requirements as a U.S. corporation.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

**Michele E. Myers**, Recent Development, *In re Anonymous*, 18 OHIO ST. J. ON DISP. RESOL. 591 (2003).

This recent development analyzes the Fourth Circuit Court of Appeals' decision in *In re Anonymous*. It discusses the procedural and factual context of the case as well as the important protections that the court's holding provides to confidentiality of mediation communications. The author concludes that the court established an effective balance between protecting the public interest in preserving confidentiality and the private interests of parties who may need access to the mediation communications in later disputes.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{132} CONFIDENTIALITY

**Sue Nelson**, *Overview of the Fee Arbitration Process*, 46 ADVOC., July at 20 (2003).

Fee arbitration provides an alternative mean for speedy, efficient, and fair resolution of disputes over fees between attorneys and clients. This article gives an overview of the procedures of fee arbitration and describes how the procedure is initiated. The article also gives an overview of the multiple persons and parties involved in fee arbitrations, including a settlement facilitator, the parties at issue, and an arbitration panel.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Sandra Schultz Newman & Scott E. Friedman**, *Appellate Mediation in Pennsylvania: Looking Back at the History and Forward to the Future*, 5 J. APP. PRAC. & PROCESS 409 (2003).

This article includes a summary of the foundations of appellate mediation that traces its primary development in the federal courts of appeal, a discussion of the extension of appellate mediation programs to state appellate courts, and an examination of the specifics of the Pennsylvania Commonwealth Court's program. In its final section, the article concludes that the Pennsylvania Commonwealth Court's report of its program's success is well-founded and advocates for extension of that program.

{21} MEDIATION—GENERAL

{133} COURT REFORMS

{128} REQUIREMENTS: STATUTORY OR RULES

{136} ECONOMIC ADVANTAGES OF ADR

**Eric W. Nicastro**, Comment, *Confronting the Neighbors: Community Impact Panels in the Realm of Restorative Justice and Punishment Theory*, 9 ROGER WILLIAMS U. L. REV. 261 (2003).

This article addresses the use of community impact panels for low-level, quality-of-life crimes such as public urination, prostitution, and vandalism. Putting the offender in front of members of the community, who can describe the harm caused by the offender's conduct, gives the community a voice in the criminal process and may help combat recidivism. The author notes that these types of programs have some similarities to victim offender mediation programs.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

**Dennis R. Nolan**, *Employment Arbitration After Circuit City*, 41 BRANDEIS L.J. 853 (2003).

While *Circuit City v. Adams* adopted a narrow interpretation of the FAA's exclusion of to whom contracts of employment are applied, there are still major battles to be fought over employment arbitration. This article discusses issues for future employment arbitration battles, including the specific rules applicable to contract formation, the specific requirements of a fair procedure, and the standard of judicial review.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{147} POWER IMBALANCE

**Elena Nosyreva**, *Alternative Dispute Resolution as a Means of Access to Justice in the Russian Federation*, 12 PAC. RIM L. & POL'Y J 709 (Douglas Carman & Dana Tumenova trans., 2003).



This article is about the revolution of legal reforms occurring in Russia, particularly with alternative dispute resolution (ADR). This article discusses three forms of ADR—negotiation, claim-based dispute resolution, and mediation. The article also discusses how these new legal reforms using ADR can be reconciled with the historical culture and norms in Russia.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

**William R. Nugent et al.**, *The Practice of Restorative Justice: Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis*, 2003 UTAH L. REV. 137.

This article examines victim-offender mediation (VOM) by doing a study of juvenile delinquents who went through a VOM program. After accounting for some potential causes of error in the testing procedures, the authors found that there is evidence that VOM causes a decrease in delinquent behavior and a decrease in severity of behavior among those who do not cease delinquency. The authors believe that these results validate the effects of VOM programs.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{136} ECONOMIC ADVANTAGES OF ADR

{149} QUALITY CONTROL

**Molly Townes O'Brien**, *At the Intersection of Public Policy and Private Process: Court-Ordered Mediation and the Remedial Process in School Funding Litigation*, 18 OHIO ST. J. ON DISP. RESOL. 391 (2003).

The article examines the Supreme Court of Ohio's order referring a school finance case, *DeRolph v. State*, to mediation. The author addresses how mediation can contribute to institutional reform litigation and suggests ways to increase the success of this alternative to traditional litigation.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{127} REQUIREMENTS: MANDATE TO USE

**Ronald J. Offenkrantz**, *Recent Development, Negotiating and Drafting the Agreement to Arbitrate in 2003: Insuring Against a Failure of Professional Responsibility*, 8 HARV. NEGOT. L. REV. 271 (2003).

This author expresses concern at the lack of knowledge about arbitration that permeates the legal field, from law professors to private practitioners to the Supreme Court justices. The article insists that it is ethically imperative for lawyers to be educated on this topic and concludes that safeguards like continuing education and bold warnings and attorney sign-offs in contracts

are effective intermediate solutions until the problem can be rectified. The author argues that until this gap in knowledge is filled, warnings or attorney sign-offs are needed to reduce the number of "poorly-crafted arbitration clauses."

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{114} 3D PARTY: PRACTICE OF LAW

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**John J. Okuley**, Note, *Resolution of Inventorship Disputes: Avoiding Litigation Through Early Evaluation*, 18 OHIO ST. J. ON DISP. RESOL. 915 (2003).

Determination of "patent inventorship" presents a continuing difficulty for patent law practitioners. The author suggests that the opportunity for rapid, inexpensive resolution of disputes, and the capacity to maintain ongoing relationships, makes many intellectual property disputes appear well-suited for alternative dispute resolution. Nonetheless, the author believes there are several problems with using informal and non-binding mechanisms to resolve inventorship disputes. This note suggests that more formal, evaluative inventorship determination processes are necessary to avoid incorrectly identifying inventors and introducing unnecessary risks to patent validity and ownership.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Kelly Browe Olsen**, *Lessons Learned from a Child Protection Mediation Program: If at First You Succeed and then You Don't . . .*, 41 FAM. CT. REV. 480 (2003).

This article discusses the University of Arkansas at Little Rock child protection mediation program and its usefulness in helping families and courts reduce costs and keep children out of foster care. This program and others like it have begun to fail because of a lack of clear program guidelines and inadequate resources. The article suggests ways that child protection mediation programs should proceed to ensure long-term success

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Susan M. Olson & Albert W. Dzur**, *Reconstructing Professional Roles in Restorative Justice Programs*, 2003 UTAH L. REV. 57.

The authors examine the growing use of restorative justice mechanisms in the criminal justice system, which in their opinion, has left the exact roles of those facilitating the process largely undefined. The authors identify emerging trends in the field as important points for professional standards to be

focused on, and suggest that a more complex system of role definement is needed to avoid the serious practical conflicts that arise in practice.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{114} 3D PARTY: PRACTICE OF LAW

{149} QUALITY CONTROL

**Brenard Michael Ortwein II**, *The Swedish Legal System: An Introduction*, 13 IND. INT'L & COMP. L. REV. 405 (2003).

This article provides a broad outline of the fundamental structure of the Swedish legal system, identifies the current role of the legal profession in that system, and makes some general observations related to future development. Noteworthy, is that when Swedes do seek outside assistance, they have a history of utilizing arbitration rather than litigation as their primary dispute resolution method.

{44} ARBITRATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{128} REQUIREMENTS: STATUTORY OR RULES

**William W. Park**, *The Specificity of International Arbitration: The Case for FAA Reform*, 36 VAND. J. TRANSNAT'L L. 1241 (2003).

Recognizing the broad applicability of the Federal Arbitration Act (FAA) to all arbitration agreements regardless of the type of case at issue, the author proposes reforming the law as it pertains to international arbitration agreements. The author proposes, among other provisions, reforming the FAA to allow for limited review of international arbitration awards.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**William W. Park et al.**, *International Commercial Dispute Resolution*, 37 INT'L LAW. 445 (2003).

This article deals with the difficulty for judges in the United States to second-guess arbitrators in international cases. Following a decision by the 2nd Circuit, the right to attack awards may be based on manifest disregard, which gives the losing party an opportunity to disrupt the process. According to the authors, this leaves the United States at a disadvantage compared to arbitral venues where judicial intervention is limited to matters related to fundamental procedural integrity

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{73} SUBJ MATTER: GENERAL

**Julie E. Patalano**, Note, *Contracting for Judicial Review of Arbitration Agreements: Sidestepping the FAA Weakens Arbitration Viability*, 8 SUFFOLK J. TRIAL & APP. ADVOC. 81 (2003).

The author discusses the issue of contract clauses that expand judicial review of arbitration decisions. After describing the current split between the circuits on this issue, the author argues that the original purpose of the Federal Arbitration Act, and arbitration itself, should be upheld and that these clauses should not be enforced, and as a result, courts should treat all arbitration decisions the same.

{44} ARBITRATION—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Keisha I. Patrick**, Note, *A New Era of Disclosure: California Judicial Council Enacts Arbitrator Ethics Standards*, 2003 J. DISP. RESOL. 271.

In this note, the author examines recent action by the California Judicial Council to heighten arbitrators' responsibility to disclose potential sources of bias. This ruling requires disclosure where the arbitrator may have familial relations with a party, prior contact with parties, and several other situations. Although there have been numerous critics, the author concludes that such action is necessary to prevent arbitrator bias and the benefits outweigh the procedural burdens.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

{149} QUALITY CONTROL

**Joost Pauwelyn**, *WTO Compassion or Superiority Complex?: What to Make of the WTO Waiver for "Conflict Diamonds,"* 24 MICH. J. INT'L L. 1177 (2003).

The World Trade Organization (WTO) treaty is not an excuse to stalemate negotiations in other areas of the law including labor and consumer safety. There appears to be unfounded fear that whatever is agreed upon in negotiations outside the WTO must be double-checked for consistency with WTO rules, as if WTO rules cannot be deviated from except by means of a waiver.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

**Joost Pauwelyn**, *The Limits of Litigation: "Americanization" and Negotiation in the Settlement of WTO Disputes*, 19 OHIO ST. J. ON DISP. RESOL. 121 (2003).

This article examines the settlement of cases in the World Trade Organization through negotiations. The author first provides a critique on the current system in three main areas. The author then moves on to suggest

ways in which these drawbacks can be corrected to make the negotiations more meaningful for all parties.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Francis J. Pavetti**, *Why States Should Enact the Revised Uniform Arbitration Act*, 3 PEPP. DISP. RESOL. L.J. 443 (2003).

This article reviews the Revised Uniform Arbitration Act (RUAA) and its legislative promulgation. Included is a discussion of four concerns generally raised by special interest lobbyists against enactment: the RUAA will cause a loss of party autonomy in arbitration, the RUAA will unduly increase involvement of the courts in the arbitral process, RUAA would tend to impede arbitration, and RUAA drafters arbitrarily declined to address the issue of contracts of adhesion. The author suggests these problems are of little consequence and the RUAA should be adopted by individual states.

{44} ARBITRATION—GENERAL

{144} LEGISLATION

**Donna L. Pavlick**, *Apology and Mediation: The Horse and Carriage of the Twenty-First Century*, 18 OHIO ST. J. ON DISP. RESOL. 829 (2003).

The author examines the importance of an authentic apology in any dispute resolution process. She contends that an apology can help resolve conflict and help to make a victim whole. The author examines the definition, cultural context, effective use, and process of an authentic apology. Further, the author examines the possible forums in which the use of an apology can be used as part of the legal system and concludes that mediation should be the forum utilized for this strategy.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Brandon L. Peak**, *Casenote, EEOC v. Waffle House, Inc.: Employers Beware—the EEOC Is now the “Master of Its Own Case,”* 54 MERCER L. REV. 1235 (2003).

The author discusses *EEOC v. Waffle House, Inc.* and the effect this case may have on the enforcement of pre-employment arbitration agreements. The majority in *Waffle House* did not address whether a settlement or arbitration judgment would affect the type of relief the Equal Employment Opportunity Commission (EEOC) could seek. The dissent interprets this as allowing the EEOC to disregard previously settled or arbitrated disputes and seeking relief in court for employees.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

## {126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Pepperdine Dispute Resolution Law Journal**, *Uniform Mediation Act—2001*, 3 PEPP. DISP. RESOL. L. J. 449 (2003).

This article details and supports the adoption of the Uniform Mediation Act (UMA) by the states. This article also contains the text of the Act, with an explanation of each section of the UMA in the Reporters Notes.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Scott R. Peppet**, *Contractarian Economics and Mediation Ethics: The Case for Customizing Neutrality Through Contingent Fee Mediation*, 82 TEX. L. REV. 227 (2003).

This article seeks to develop a contractarian approach to mediation ethics, focusing on the debate involving customizing neutrality using contingent fee mediation (CFM). It argues that CFM should in some cases be permitted and encouraged. It concludes that rules prohibiting CFM altogether are misguided and do not consider the variations involved in mediations that could be served by allowing CFM.

{21} MEDIATION—GENERAL

{138} ETHICS: GENERAL

**Michael L. Perlin**, *"You Have Discussed Lepers and Crooks": Sanism in Clinical Teaching*, 9 CLINICAL L. REV. 683 (2003).

This article addresses the role of sanism in clinical teaching. To rebut sanism in clinical teaching, the author proposes open discussion of underlying issues, social science research, and discussion of the effects of mental disability on a client's case. Because alternative dispute resolution (ADR) survey courses may help students develop client interaction skills, the author's suggestions could be used in clinical ADR courses to prepare students for dealing with clients of mental incapacity.

{1} NEGOTIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{155} TEACHING

**Jonathan H. Peyton**, Note, *What Arbitration Clause?: The "Appropriate" Standard for Measuring Notice of Binding Arbitration to an Employee*, 36 SUFFOLK U. L. REV. 745 (2003).

Pre-dispute arbitration agreements are common in the workplace. Though many employees are unfamiliar with them, the Supreme Court had judicially blessed their use. Companies will likely continue to impose arbitration upon employees, and in order to protect employee's statutory rights, courts must adopt a standard that guards employee rights to resolution of claims in

judicial forum. According to the author, the “appropriate” standard ensures protection of employee rights.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Bob Pimm & Teri Kirk**, *New Web-Based Alternative Dispute Resolution Systems*, 21 ENT. & SPORTS L. 29 (2003).

Recognizing the high costs of litigating commercial disputes, the globalization of the world’s economy, the increased growth and use of alternative dispute resolution (ADR), and the inability of the traditional ADR service-provider market to address these problems for international businesses, the authors discusses the benefits of online ADR. Specifically, the authors proposes the “Electronic Courthouse,” an efficient online ADR model accessible from the desktop, and discusses the benefits for entertainment and sports law clients.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{78} SUBJ MATTER: COMPUTER

**Laura Kaplan Plourde**, Note, *Analysis of Circuit City Stores, Inc. v. Adams in Light of Previous Supreme Court Decisions: An Inconsistent Interpretation of the Scope and Exemption Provisions of the Federal Arbitration Act*, 7 J. SMALL & EMERGING BUS. L. 145 (2003).

Arbitration agreements are often silent as to fee allocation. The author compares two approaches to allocating the costs of arbitration: the per se and case-by-case approaches. The author criticizes the *Green Tree* decision because it leaves many questions unanswered and suggests that the Supreme Court should address the fee allocation dilemma in the employment arbitration context.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{133} COURT REFORMS

**Steven S. Poindexter**, Note, *Pre-Dispute Mandatory Arbitration Agreements and Title VII: Promoting Efficiency While Protecting Employee Rights*, 2003 J. DISP. RESOL. 301.

The author examines pre-dispute mandatory arbitration agreements and the United States Supreme Court’s treatment of such agreements. The author contends that because mandatory arbitration agreements to arbitrate Title VII claims are usually held valid at the court of appeals level, Congress should set forth the required provisions of mandatory arbitration agreements in order to better ensure due process.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{149} QUALITY CONTROL

**Charles Pou Jr.**, *"Embracing Limbo": Thinking About Rethinking Dispute Resolution Ethics*, 108 PENN ST. L. REV. 199 (2003).

The author examines the present ethical standards of dispute resolution and the need for vast improvement. Specifically he looks at Pennsylvania State University Dickinson School of Law Dispute Resolution Symposium. This symposium looked at leaders in the field of alternative dispute resolution (ADR) and their interest in improving ethical standards. Finally, he concludes with several specific suggestions for positing change in the current ethical standards of ADR.

{44} ARBITRATION—GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

{138} ETHICS: GENERAL

**Barton Poulson**, *A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice*, 2003 UTAH L. REV. 167.

This article examines restorative justice programs around the world. In order to evaluate the success of a restorative justice program, there are many psychological factors, such as judgments of fairness, accountability, increased respect, that must be studied and evaluated. Although the restorative justice systems throughout the world varied in many respects, restorative justice consistently performed better from the victim and the offender's perspectives than the traditional criminal justice system.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{124} COMPARISONS: CROSS-CULTURAL

{133} COURT REFORMS

**Van M. Pounds**, *Promoting Truthfulness in Negotiation: A Mindful Approach*, 40 WILLAMETTE L. REV. 181 (2004).

This article examines truthfulness in negotiations. Often attorneys feel they cannot zealously advocate for their clients during negotiations while remaining completely honest with the opposing party. The author identifies mindfulness, an ancient Buddhist practice, as the key to greater truthfulness in negotiations. The author then examines why attorneys use deceptive strategies during negotiations and illustrates how mindfulness might lead to a more truthful course of action by the attorneys.

{1} NEGOTIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{138} ETHICS: GENERAL



**PollyBeth Proctor**, *Determining 'Reasonable Accommodation' Under the ADA: Understanding Employer and Employee Rights and Obligations During the Interactive Process*, 33 SW. U. L. REV. 51 (2003).

The author discusses the difficulty in determining what a "reasonable accommodation" and other such terms as used in the Americans with Disabilities Act mean. The author argues that mediation could be the best way to settle these disputes because the parties can then discuss what the problems are and how a solution can best be reached.

{21} MEDIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

**Matthew Rasmussen**, Note, *Overextending Immunity: Arbitral Institutional Liability in the United States, England, and France*, 26 FORDHAM INT'L L.J. 1824 (2003).

The author discusses how arbitral immunity and liability depend on the relationship between the arbitrator and the parties. Immunity depends on the contractual nature of the arbitration and also the comparability of the arbitrator's role to that of a judge. The author believes that arbitration institutions should not be granted absolute immunity because they are not arbitrators and operate in a non-judicial manner.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{146} ORGANIZATION POLICIES & RULES

**Monica Rausch**, Recent Development, *The Uniform Mediation Act*, 18 OHIO ST. J. ON DISP. RESOL. 603 (2003).

This article discusses the importance of mediation confidentiality in promoting open and candid discussions throughout the dispute resolution process. The author comments on the scope of the Act, particularly in regard to mediation confidentiality and privilege, the pros and cons of the Act, and its current status in state legislatures.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{132} CONFIDENTIALITY

**Mary Ellen Reimund**, Note, *Mediation in Criminal Justice: A Restorative Approach*, 46 ADVOC., May at 22 (2003).

The author discusses mediation in criminal cases, advocating a restorative approach to such mediation and a humanistic model. She concludes that mediation (as restorative justice), especially victim-offender mediation, presents a powerful and workable alternative to the more common retributive methods for administering criminal justice.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

**Richard C. Reuben**, *The Sound of Dust Settling: A Response to Criticisms of the UMA*, 2003 J. DISP. RESOL. 99.

The author responds to Professor Brian Shannon's criticisms of the Uniform Mediation Act (UMA). The author also gives some of the unpublished history of the UMA effort in the hope that it may facilitate greater understanding of the drafting process. Finally, the author provides some suggestions to state legislators for integrating the UMA into their laws with minimal disruption.

{21} MEDIATION—GENERAL

{144} LEGISLATION

{102} SUBJ MATTER: PUBLIC POLICY

**Richard C. Reuben**, *First Options, Consent to Arbitration, and the Demise of Separability: Restoring Access to Justice for Contracts with Arbitration Provisions*, 56 SMU L. REV. 819 (2003).

This article discusses the rise of alternative dispute resolution. It introduces the separability doctrine which encourages arbitration in place of a trial on the theory of implied consent to arbitration and the view that an arbitration provision is a separate contract. It then contrasts this doctrine with the *First Options* rule that courts have authority to try the case unless there is an express provision that calls for arbitration. The author describes the context and current state of law in the area of consent to arbitration under the Federal Arbitration Act (FAA), and urges the Supreme Court to continue its path toward actual consent to arbitration.

{44} ARBITRATION—GENERAL

{133} COURT REFORMS

{127} REQUIREMENTS: MANDATE TO USE

**Jennifer M. Rhodes**, Comment, *Judicial Review of Partial Arbitral Awards under Section 10(a)(4) of the Federal Arbitration Act*, 70 U. CHI. L. REV. 663 (2003).

This article addresses the longstanding policy supporting the finality of arbitration awards, embodied in the Federal Arbitration Act's limited judicial review. The author examines the cases that have strayed from the finality requirement and ultimately concludes that the finality requirement should be upheld because Congress has not authorized extended judicial review of arbitral awards. Furthermore, loosening the finality requirement could compromise the goal of arbitrator deference.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{128} REQUIREMENTS: STATUTORY OR RULES

**Leonard L. Riskin**, *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1 (2003).

In this article, the author revisits a mediation grid that he proposed to facilitate discussions about mediation. The author first discusses the old grid and addresses its limitations. He then goes on to propose a new grid that integrates his current findings to improve future discussions.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Bonnie Roach**, *Recent Development*, *George Watts & Son v. Tiffany & Co.*, 17 OHIO ST. J. ON DISP. RESOL. 503 (2002).

A recent case before the Seventh Circuit questioned whether an arbitrator that disregards state law has committed manifest disregard. The court appears to decide that if the award is similar to an outcome that the parties could have reached on their own, the arbitrator has not committed manifest disregard. According to the court, the only way an arbitrator commits manifest disregard is by ordering the parties to violate the law.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Paul H. Robinson**, *The Virtues of Restorative Processes, the Vices of "Restorative Justice,"* 2003 UTAH L. REV. 375.

The author draws a dichotomy between restorative processes, such as victim-offender mediation and sentencing circles, and "restorative justice," and the movement to replace the traditional criminal justice system with these restorative processes. Specifically, the author takes issue with restorative justice's categorical opposition to punishment in its retributivist or "just deserts" sense and its claim for priority over deterrence and incapacitation rationales.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

**Peter Robinson**, *Centuries of Contract Common Law Can't Be All Wrong: Why the UMA's Exception to Mediation Confidentiality in Enforcement Proceedings Should Be Embraced and Broadened*, 2003 J. DISP. RESOL. 135.

The author discusses the Uniform Mediation Act (UMA) and its aim of unifying mediation confidentiality laws. Specifically relating to contract law, the author explains how strict mediation confidentiality currently hinders mediated agreements in many jurisdictions. The author concludes that states must modify their statutes and expand on the UMA to ensure that mediation confidentiality does not interfere with the application of contract law in proceedings to enforce mediated agreements.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{132} CONFIDENTIALITY

## {144} LEGISLATION

**Amanda Rohrer**, Note, *UDRP Arbitration Decisions Overridden: How Sallen Undermines the System*, 18 OHIO ST. J. ON DISP. RESOL. 563 (2003).

The author argues that the Uniform Domain Name Dispute Resolution Policy's (UDRP) attempt at simplifying the domain name dispute resolution process is a step in the right direction. The UDRP has clearly established itself as a powerful tool to fight cyber squatting. Now that the Policy has been in place for over three years, Internet Corporation for Assigned Name and Numbers should step back, evaluate the performance of the system, and implement appropriate improvements.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{78} SUBJ MATTER: COMPUTER

**Cesare P.R. Romano**, *The Americanization of International Litigation*, 19 OHIO ST. J. ON DISP. RESOL. 89 (2003).

In this article, the author examines the effects of American litigation on international cases. The author addresses the Americanization of international litigation by addressing the adversarial nature of suits, the introduction of amicus curiae and private attorneys into World Trade Organization disputes, and the basic influence of U.S. attorneys and the English language.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Edward L. Rubin**, *Trial by Battle. Trial by Argument.*, 56 ARK. L. REV. 261 (2003).

The article traces the evolution of modern litigation from a "trial by battle" to the current "trial by argument." The author discusses how the "trial by argument" system, which is common in U.S. society, has many disadvantages. The author examines a number of alternatives to this system, including the use of arbitration in civil matters, as ways to resolve those problems.

{1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{145} OMBUDSPERSON

**Michele Ruscio**, Note, *The Enforceability of Arbitration Agreements that Foreclose Statutory Awarded Remedies*, 22 J.L. & COM. 125 (2003).

The author reviews cases that have decided the issue of whether courts or the arbitrators should decide a claim when a clause in the arbitration agreement prevents a statutory awarded remedy. Further, the author examines holdings regarding arbitration agreements in the commercial and employment context. The author concludes by examining the rationales for having claims decided by the courts.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{102} SUBJ MATTER: PUBLIC POLICY

**Thomas D. Russell**, *Between Town and Gown: The Rise and Fall of Restorative Justice on Boulder's University Hill*, 2003 UTAH L. REV. 91.

This article outlines and discusses the actual use of restorative justice programs, and their eventual demise, in dealing with conflicts between students and residents in a college town. Specifically, the article discusses the use of community justice councils, neighborhood associations, victim impact statements, community policing, community group conferences, and sentencing circles in the restorative justice process.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{77} SUBJ MATTER: COMMUNITY

**Charles F. Sabel & William H. Simon**, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1015 (2003).

Civil rights advocates seeking to restructure public agencies are now approving the experimentalist approach, which emphasizes ongoing stakeholder negotiation. Experimentalist remedies use permanent processes of participatory self-revision rather than a one-time readjustment to fixed criteria. Courts are less involved because norms that define compliance are the work of the actors who live by them.

{1} NEGOTIATION—GENERAL

{104} SUBJ MATTER: REGULATORY

**Dennis P. Saccuzzo**, *Controversies in Divorce Mediation*, 79 N.D. L. REV. 425 (2003).

This article begins by proposing mediation as an alternative to divorce proceedings. The author addresses the current state of divorce mediations by looking at the definition and scope of these mediations. The article then focuses on several controversies surrounding divorce mediations including who should mediate these disputes, power imbalances, and ethical issues.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{138} ETHICS: GENERAL

## {147} POWER IMBALANCE

**David Sally**, *Yearn for Paradise, Live in Limbo: Optimal Frustration for ADR*, 108 PENN ST. L. REV. 89 (2003).

The author presents the idea that the goals of alternative dispute resolution (ADR) are frustrated because it is impossible to actually reach one's ideals. He then goes on to examine various approaches to reaching the goals of ADR and how they are specifically frustrated including economics, psychology, and negotiations. Finally, he concludes that although it may not reach its ideals, ADR is still successful and is working just fine.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

{125} COMPARISONS: HISTORICAL

**Jeffrey M. Samuels & Linda B. Samuels**, *Internet Domain Names: The Uniform Dispute Resolution Policy*, 40 AM. BUS. L.J. 885 (2003).

This article describes the Uniform Dispute Resolution Policy (UDRP), which requires certain internet disputes be submitted to an administrative proceeding, and discusses how it provides a quick, inexpensive way to resolving cybersquatting cases. Though UDRP helps resolve legal disputes regarding the registration and use of Internet domain names, the article discusses the need for the UDRP to be expanded to include rights other than trademark rights, including tradenames and geographical indications.

{44} ARBITRATION—GENERAL

{127} REQUIREMENTS: MANDATE TO USE

{78} SUBJ MATTER: COMPUTER

**Valerie A. Sanchez**, *Back to the Future of ADR: Negotiating Justice and Human Needs*, 18 OHIO ST. J. ON DISP. RESOL. 669 (2003).

Focusing on a need to answer calls to reform aspects of alternative dispute resolution (ADR) during the early stages of its institutionalization, the author examines the historic underpinnings of ADR in efforts to propose a reformative framework for fulfilling the aspirations of the ADR movement. Overall, this framework aims to improve the ability of practitioners to help parties negotiate outcomes that better serve the twin historical aspirations of serving justice and meeting their human needs.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Cynthia A. Savage**, *ADR in the Courts: Progress, Problems, and Possibilities*, 108 PENN ST. L. REV. 327 (2003).

The author examines the history between the partnership of alternative dispute resolution and the courts. She first looks at the benefits that have

come from this partnership and from the institutionalization of mediation that has resulted. Next, she examines several problems that arise when there is too much court oversight of mediation. Finally, she concludes by making suggestions as to how the difficulties that have arisen may best be dealt with.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

{149} QUALITY CONTROL

**Stephanie Schmidt**, *Recent Development, A Perfunctory Change? Harvard University's New Sexual Misconduct Complaint Procedure: Lessons from the Frontlines of Campus Adjudication Systems*, 18 BERKELEY WOMEN'S L.J. 265 (2003).

This recent development examines the administrative board of Harvard College's new procedure for responding to complaints of peer-on-peer misconduct, including sexual misconduct. The final section of this article analyzes the risk of error under both the old and the new policies for peer dispute resolution before advocating for systematic change at Harvard.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{134} DISPUTE PREVENTION

**David S. Schwartz**, *Understanding Remedy-Stripping Arbitration Clauses: Validity, Arbitrability, and Preclusion Principles*, 38 U.S.F. L. REV. 49 (2003).

This article discusses the unenforceability of arbitral clauses that deprive parties of their substantive rights and remedies. The author discusses the approaches that courts have historically taken in striking down these provisions and addresses what role preclusion principles should play in cases where these types of provisions are struck down ultimately allowing arbitration of some claims, but not of other claims.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Robert Alexander Schwartz**, *Note, Can Arbitration Do More for Consumers? The Tila Glass Action Reconsidered*, 78 N.Y.U. L. REV. 809 (2003).

The author assesses the state of the debate in the latest chapter of the ever-unfolding law of arbitration. What works for high-value agreements between sophisticated parties in arms-length negotiation may not work for contracts of adhesion between businesses and consumers. The author suggests an alternative legal framework for attacking unfair arbitration clauses while offering a set of modernizing improvements that might make arbitration a

viable tool for the resolution of Truth in Lending Act claims and other consumer agreement disputes.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

**Jernej Sekolec & Michael B. Getty**, *The UMA and the UNCITRAL Model Rule: An Emerging Consensus on Mediation and Conciliation*, 2003 J. DISP. RESOL. 175.

The authors examine the impact that the Uniform Mediation Act (UMA) and the United Commission on International Trade Law Model Law for International Commerce Conciliation (UNCITRAL) had on international dispute resolution. Through this examination, the author shows how these two efforts served to highlight the importance of mediation and conciliation. The authors also point to the central components of each of these processes.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

**Louise Phipps Senft**, *Portrait of a Good Mediator*, 36 MD. B.J., Aug. at 8 (2003).

What are the qualities of a good mediator? While many practitioners will answer this question by enumerating the personality traits of a good mediator, the author posits a different, procedural approach. This article focuses on factors such as mediator orientation toward a problem, mediator style, mediator presence, and mediator competence.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

**Brian D. Shannon**, *Dancing with the One that "Brung Us"—Why the Texas ADR Community Has Declined to Embrace the UMA*, 2003 J. DISP. RESOL. 197.

The author explains that opposition in Texas to the Uniform Mediation Act (UMA) is due to the UMA's approach to mediation confidentiality and the complexity of its provisions. The author compares the UMA to the Texas Alternative Dispute Resolution (ADR) Act, and comments that the Texas ADR Act, while imperfect and in need of some modification, should not be replaced by the confusing language of the UMA.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{132} CONFIDENTIALITY

{144} LEGISLATION



**Keith Sharfman**, *Valuation Averaging: A New Procedure for Resolving Valuation Disputes*, 88 MINN. L. REV. 357 (2003).

This article discusses valuation disputes, including problems with how they are currently handled and offers solutions to these problems. Among the solutions suggested are contractual solutions, including an agreement to participate in "final offer" ("baseball") arbitration and a procedural solution to use valuation averaging. Valuation averaging does raise some constitutional concerns which need to be carefully considered and addressed.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Khalil Z. Shariff**, *Designing Institutions to Manage Conflict: Principles for the Problem Solving Organization*, 8 HARV. NEGOT. L. REV. 133 (2003).

The author hypothesizes that dispute resolution can be effectively managed through the use of various social institutions but notes that there is little scholarship on this issue. He develops various dimensions for institutional designs and creates a specific set of design principles as a guide for potential future theories on this issue, then compares these to the recent institutional design of post-Taliban Afghanistan in the Bonn Agreement of 2001.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

**Marc Sher**, Note, *Chapter 20 Dispute Resolution Under NAFTA: Fact or Fiction?*, 35 GEO. WASH. INT'L L. REV. 1001 (2003).

This note addresses the workings of the Chapter 20 arbitration process, with particular focus on the most recent decision of a Chapter 20 panel, *In re Cross-Border Trucking Services*. The author surveys obstacles that the implementation of the panel decision faced in Congress and how the United States's delay in compliance affects future trade with Mexico and North American Free Trade Agreement (NAFTA) in general. Finally, the author places the Chapter 20 process in the context of other international trade dispute resolution mechanisms, specifically those of the World Trade Organization. Based on that comparison, the author proposes an improved method of dispute resolution consistent with the free trade goals of NAFTA.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**David Sherwyn**, *Because It Takes Two: Why Post-Dispute Voluntary Arbitration Programs Will Fail to Fix the Problems Associated with Employment Discrimination Law Adjudication*, 24 BERKELEY J. EMP. & LAB. L. 1 (2003).

This article explains why parties have not, and likely will not, choose to arbitrate an employment dispute after it has arisen. Numerous companies have implemented pre-dispute mandatory agreements to arbitrate and while

the Supreme Court has held that these mandatory agreements are generally enforceable, various organizations have proposed legislation to the contrary. Furthermore, the author analyzed post-dispute voluntary arbitration system by surveying labor and employment lawyers in Chicago, Illinois with the result that parties have not and most likely will not choose to arbitrate an employment dispute after it has risen.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Donna Shestowsky**, *Improving Summary Jury Trials: Insights from Psychology*, 18 OHIO ST. J. ON DISP. RESOL. 469 (2003).

This article thoroughly examines the summary jury trial (SJT) from a psychological perspective, emphasizing the need to consider jury psychology research. The author argues that psychological research suggest that SJTs do not meet their potential for predicting traditional jury decisions and offers recommendations for improvements.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

**Melissa Hayes Shirey**, *The Role of Arbitration in Reviewing Deportation Orders of Criminal Aliens: A Possible Solution to Remedy the Current System*, 17 OHIO ST. J. ON DISP. RESOL. 487 (2002).

The author briefly discusses the history of deportation procedures and the problems that are inherent in deportation proceedings. According to the author, the use of a neutral arbitrator in reviewing all deportation procedures would create a more expedient, efficient, and just proceeding, which would protect the rights of aliens and meet Congress' goal of expeditiously removing criminal aliens.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{144} LEGISLATION

**Debbie Shosteck**, *Beyond Reserved Rights: Tribal Control over Groundwater Resources in a Cold Winters Climate*, 28 COLUM. J. ENVTL. L. 325 (2003).

The author explains that certain tribes, through negotiation, have made tremendous strides in securing adequate water resources. This has occurred in light of the fact that Native Americans have been hard pressed to demonstrate that Congress intended for them to maintain jurisdiction over groundwater resources and to persuade the Supreme Court likewise. The author states that tribes would benefit from negotiating settlement agreements with states rather than enduring the risk of prolonged litigation.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{87} SUBJ MATTER: GOV'T

{123} SETTLEMENT: PRESSURES TO SETTLE

**W. Scott Simpson & Gordon L. Blair**, *The Magnuson Moss Act Defense to Arbitration: What's Left After Davis v. Southern Energy Homes, Inc.*, 64 ALA. LAW. 367 (2003).

This article dissects the judicial history in Alabama concerning the controversial issue of whether consumer warranty claims are arbitrable. The article specifically concentrates on the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act and the decisions in *Wilson v. Waverlee Homes, Inc.* and *Davis v. Southern Energy Homes, Inc.* According to the authors, warrantors face a Catch-22 situation where their warranty agreements can often be rendered unenforceable.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

**Brenda V. Smith**, *Battering, Forgiveness, and Redemption*, 11 AM. U. J. GENDER SOC. POL'Y & L. 921 (2003).

The author discusses the use of mediation to resolve disputes involving domestic violence. It focuses on the restorative justice framework and how mediation is used within that framework in order to maintain a relationship while resolving issues that lead up to the violence. The article analyses the Ho'oponopono process, the Navajo Peacemaking process, and Gacaca, three indigenous models of dispute resolution that resemble mediation and apply principles of restorative justice.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Janelle Smith**, Note, *Peacemaking Circles: The "Original" Dispute Resolution of Aboriginal People Emerges as the "New" Alternative Dispute Resolution Process*, 24 HAMLINE J. PUB. L. & POL'Y 329 (2003).

This article explores the value of peacemaking circles, with a special focus on healing circles, and concludes that peacemaking circles are not only cost-effective, but they are a valuable extrajudicial method for dispute resolution in the sense that they offer communities a chance to participate directly in resolving issues that arise in their community.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{77} SUBJ MATTER: COMMUNITY

{100} SUBJ MATTER: PRISONS

**Leo F. Smyth**, *International Mediation and Capitulation to the Routine*, 108 PENN ST. L. REV. 235 (2003).

The author begins by looking at questions surrounding the ethics of international mediation. He then examines the role of mediators and how they view inter-group conflicts including ethnic groups. The author considers these questions: Does the conflict exist because of external or internal perspectives? How do we deal with the ethical issues surrounding international mediation by examining the decisions made by mediators themselves when dealing with these conflicts?

{21} MEDIATION—GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

{138} ETHICS: GENERAL

{92} SUBJ MATTER: INT'L

**Astrid Stadler**, *The Role of the Judge in the Development of Civil Litigation: The Multiple Roles of Judges and Attorneys in Modern Civil Litigation*, 27 HASTINGS INT'L & COMP. L. REV. 55 (2003).

This article discusses European civil procedure rules and alternative dispute resolution in Germany. The German Civil Procedure Rules Reform Act, which introduces a mandatory conciliation hearing in court, is designed to improve the culture of conciliation in German civil courts because settlements of a dispute by mutual agreement are less expensive and more efficient than lengthy proceedings.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

{127} REQUIREMENTS: MANDATE TO USE

**Ryan P. Steen**, Comment, *Paying for Employment Dispute Resolution: Dilemmas Confronting Arbitration Cost Allocation Throw the Arbitration Machine Into Low Gear*, 7 J. SMALL & EMERGING BUS. L. 181 (2003).

The article considers the issues of who should pay the costs of employment arbitration. Often, arbitration agreements are silent as to fee allocation. Two approaches to allocating the costs of arbitration are compared: the per se and case-by-case approaches. The author criticizes the *Green Tree* decision because it leaves many questions unanswered. The author suggests that the Supreme Court should address the fee allocation dilemma in the employment arbitration context.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{133} COURT REFORMS

**Jean R. Sternlight**, *The Rise and Spread of Mandatory Arbitration as a Substitute for the Jury Trial*, 38 U.S.F. L. REV. 17 (2003).

The author contends that adequate consideration of the constitutional right to a jury trial has not been afforded by courts when determining the validity of

mandatory arbitration clauses arising out of adhesion-type contracts. The author argues that judges should apply the traditional jury trial waiver test when assessing the validity of these provisions in order to prevent companies from using mandatory arbitration clauses to bypass the party's right to a jury trial.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Joseph B. Stulberg**, *The UMA: Some Roads not Taken*, 2003 J. DISP. RESOL. 221.

The author examines the drafting process of the Uniform Mediation Act (UMA) with respect to the debated confidentiality provisions. Although applauding the efforts of the drafters, the author concludes that the confidentiality provisions are not substantial enough and urges states to use caution when considering adopting the UMA provisions.

{21} MEDIATION—GENERAL

{132} CONFIDENTIALITY

{102} SUBJ MATTER: PUBLIC POLICY

**Anne K. Subourne**, Comment, *Motivations for Mediation: An Examination of the Philosophies Governing Divorce Mediation in the International Context*, 38 TEX. INT'L L. J. 381 (2003).

Many nations now mandate or suggest mediation in the settlement of divorce cases, but the theories underlying each nation's legislation differ greatly. This article explores the approach of several nations in the implementation of mediation in their legal systems while looking at the five main theories behind mediation legislation: traditionalist; reconciliation to reduce the divorce rate; child advocacy; creating new rights for women; and administrative necessities.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS CULTURAL

**Robert E. Talbot**, *A Practical Guide to Representing Parties in EEOC Mediations*, 37 U.S.F. L. REV. 627 (2003).

With the Equal Employment Opportunity Commission's (EEOC) new emphasis on mediation, it has become imperative for employment lawyers to understand how the EEOC mediation process works and how to function effectively within it. The purpose of this article is to describe EEOC mediations and explain how to successfully represent mediating parties.

{21} MEDIATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

**Douglas W. Taylor**, *Assessment and Plan for Medical Malpractice: Quality Improvement through Mediation*, 6 DEPAUL J. HEALTH CARE L. 343 (2003).

Empirical studies indicate that medical health professionals frequently make mistakes as the result of negligence. While malpractice litigation is necessary, dissatisfaction with such lawsuits is also widespread. The author argues that the organized mediation of malpractice claims is a practical solution, because such a system would likely to increase patient satisfaction and permit an open forum for the physicians to explain their behavior openly.

{21} MEDIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{89} SUBJ MATTER: HOSPITALS

**Andrea Terry**, *The Evolution of Mediation in District Court*, 36 MD. B. J., Aug. at 34 (2003).

The article discusses the history of mediation and other forms of alternative dispute resolution (ADR) in Maryland District Court. Specifically, it describes the mediation options available for litigants and discusses the court's partnership with community mediation programs and their pre-trial referral system. The ADR office's primary goal is to assure quality in performance and outcome.

{21} MEDIATION—GENERAL

{125} COMPARISONS: HISTORICAL

{133} COURT REFORMS

**Fran L. Tetunic**, *Florida Mediation Case Law: Two Decades of Maturation*, 28 NOVA L. REV. 87 (2003).

The author reviews Florida's court-annexed mediation system and the case law that it has produced including recent statistics on the number of mediations and mediators in Florida's system. The article contains detailed discussion on the main areas of case law interpreting various Florida statutes addressing mediation: confidentiality, whether the mediation should be mandatory for parties, the court's role in enforcing and interpreting mediation agreements, when courts must reject mediation agreements because they violate the law, and procedural issues.

{21} MEDIATION—GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

{132} CONFIDENTIALITY

{133} COURT REFORMS

**D.A. Rollie Thompson**, *The Evolution of Modern Canadian Family Law Procedure: The End of the Adversary System? Or Just the End of the Trial?*, 41 FAM. CT. REV. 155 (2003).

This article discusses the evolution of modern Canadian family law procedure. The author explains that a variety of factors have contributed to

the evolution of the current model, including: the number of family law cases, increased complexity of family law, and lack of an increase in the number of family law judges. The current model encompasses caseload management goals, achieved through limited discovery, early intervention, mediation, and/or settlement conferences.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{125} COMPARISONS: HISTORICAL

**Sharon S. Townsend**, *Fatherhood: A Judicial Perspective: Unmarried Fathers and the Changing Role of the Family Court*, 41 FAM. CT. REV. 354 (2003).

The author, a family court judge, describes the changes that have taken place over the years in the setting of custody hearings and argues that alternative dispute resolution (ADR) procedures are best suited to the current environment and should be employed by the courts to help parents set up custodial schedules in the best interest of the child. She calls them “problem-solving” courts.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Kristine Treglia**, *New York City Transit Authority v. Transport Workers Union of America, Local 100, AFL-CIO (Decided October 10, 2002)*, 47 N.Y.L. SCH. L. REV. 555 (2003).

This article discusses a New York Court of Appeals case which held that the Public Authorities Law did not prevent the New York City Transit Authority from referring employee disciplinary actions to an arbitrator, that the outcome of the arbitrations did not violate public policy, and that the arbitration awards did not violate any constitutional, statutory, or decisional law.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

**Nsongurua J. Udombana**, *The Unfinished Business: Conflicts, the African Union and the New Partnership for Africa's Development*, 35 GEO. WASH. INT'L L. REV. 55 (2003).

The article examines the current mechanisms for dealing with conflicts in Africa and offers some suggestions towards strengthening them. Current mechanisms include arbitration and alternative dispute resolution. The author advises the leaders of these new creatures to put the problem of conflicts on the front burner of their continental development agenda because peace and security are the keys to the restoration of the continent's greatness and glory.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Eric Van Ginkel**, *Reframing the Dilemma of Contractually Expanded Judicial Review: Arbitral Appeal vs. Vacatur*, 3 PEPP. DISP. RESOL. L. J. 157 (2003).

Section 10(a) of the Federal Arbitration Act (FAA) enumerates grounds on which an arbitral award can be set aside. This article analyzes the legitimacy of an arbitral award on the basis of a pre-dispute agreement providing that the arbitrator's findings of fact or law may be subjected to judicial review, and the interaction of such judicial review with the section 10(a) of the FAA.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Amy Vandelloo & Justin Lannen**, Note, *Understanding the Effect of Arbitration Agreements on the EEOC's Right to Bring Claims for Victim-Specific Relief Under ADA*, 4 TEX. TECH. J. TEX. ADMIN. L. 69 (2003).

This article discusses the effect that employment arbitration agreements have on the Equal Employment Opportunity Commission's (EEOC) right to bring employment discrimination claims under the American's with Disabilities Act. Recent Supreme Court decisions have solidified the powers of the EEOC, and while an employment arbitration agreement may preclude an employee from pursuing an individual claim in court, it will not preclude the EEOC from filing suit on the employee's behalf.

{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

**David VanderZwaag et al.**, *Canadian Aquaculture and the Principles of Sustainable Development: Gauging the Law and Policy Tides and Charting a Course—Part II*, 28 QUEEN'S L.J. 529 (2003).

The authors assess the regulatory schemes of Atlantic provinces in Canadian fish farming ("aquaculture"), and evaluate overall trends in Canadian aquaculture regulation in light of the principles of sustainable development, and identify areas in need of reform. The authors recommend alternative dispute resolution to increase public acceptance of proposed aquaculture sites and facility operations and conclude by outlining key issues to be addressed in order to ensure the sustainability of Canadian aquaculture.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{86} SUBJ MATTER: FARM

**Melanie A. Vaughn**, *Mediation Tips*, 36 MD. B.J., Aug. at 46 (2003).

This article defines the dispute resolution processes continuum (with negotiation and mediation at one end, evaluative processes in the middle, and



adjudicative process at the other end). It explains how the continuum moves from the least intrusive methods (negotiation and mediation) to the most intrusive (adjudicative processes). The article discusses various mediation models, providing tips for selecting mediators, preparing, and participating in the process.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**William Wang**, Note, *International Arbitration: The Need for Uniform Interim Measures of Relief*, 28 BROOK. J. INT'L L. 1059 (2003).

This note states that in order for the system of international commercial arbitration to function effectively, a uniform procedure for the awarding and enforcement of interim measures of relief is necessary. Without the protection of such provisional remedies, the outcome of the arbitration could become meaningless to the winning party.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Stephen J. Ware**, *Contractual Arbitration, Mandatory Arbitration, and State Constitutional Jury-Trial Rights*, 38 U.S.F. L. REV. 39 (2003).

In discussing the distinction between contractual and mandatory arbitration, the author contends that some scholars have interpreted arbitration clauses that are part of form contracts as mandatory, despite the fact that the parties may have voluntarily entered into the contract and thus accepted its terms. The author also discusses the Federal Arbitration Act and whether it preempts state laws that may render arbitration clauses invalid.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Brien M. Wassner**, *Major League Baseball's Answer to Salary Disputes and the Strike: Final Offer Arbitration: A Negotiation Tool Facilitating Adversary Agreement*, 6 VAND. J. ENT. L. & PRAC. 5 (2003).

Final offer arbitration (FOA) was adopted by Major League Baseball (MLB) to deal with the problem of increasing labor conflicts. This article claims that FOA is a superior method for resolving salary disputes in professional sports because it is designed to facilitate negotiation and settlement rather than to resolve the dispute subsequent to adversarial hearings. Ninety percent of baseball salary arbitration cases are settled prior to the actual hearing.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{114} 3D PARTY: PRACTICE OF LAW

**Karen Webb**, Comment, *The "Appeal" of the Internet—Looking at the Uniform Domain Name Dispute Resolution Policy and How It Is Newly Influenced by the Anticybersquatting Consumer Protection Act*, 43 SANTA CLARA L. REV. 1431 (2003).

The author discusses the procedure used by Internet domain name registration agencies to settle disputes between holders of domain names and trademark holders who claim that their trademark is being violated by a domain name. This procedure, the author argues, does not include an appeals process and needs one to remain legitimate in the aftermath of a case where a domain name holder kept his domain under the anticybersquatting act.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER

**Todd Weiler**, *NAFTA Article 1105 and the Principles of International Economic Law*, 42 COLUM. J. TRANSNAT'L L. 35 (2003).

This article discusses substantive international economic law (IEL) principles found in the investor-state arbitrations that have become an increasingly common fact of economic and regulatory life within the three countries party to the North American Free Trade Agreement (NAFTA). It explains how these principles can be used so that the jurisprudence of NAFTA investor-state arbitration remains within the mainstream of international economic law and contributes to its purposive development.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Todd Weiler**, *NAFTA Chapter 11 Jurisprudence: Coming Along Nicely*, 9 SW. J. L. & TRADE AM. 245 (2002).

The author discusses seven important cases decided by the North American Free Trade Agreement's Chapter Eleven tribunals, an arbitration board set up to settle disputes between member states and investors from other member states. The author identifies the "minimum standard of treatment" of foreign investors and "non-discriminatory" attitude toward foreign investors as the two most important areas of jurisprudence in this area.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Robert Weisberg**, *Restorative Justice and the Danger of "Community,"* 2003 UTAH L. REV. 343.

There is a danger involved in restorative justice when rehabilitation of the offender becomes the focus. The reintegration of the offender in society works counter to the main purpose of restorative justice which is to restore the victim to a state prior to being victimized. This danger can be successfully overcome as long as proponents of restorative justice remain

self-critical and vigilant in detecting and avoiding this focus on restoring the community rather than the victim.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

**Jay Lawrence Westbrook**, *International Judicial Negotiation*, 38 TEX. INT'L L. J. 567 (2003).

This article explores negotiation between courts in two sovereign nations. It used to be that one court would make a decision without regard for the future activity of the other court. Today, courts are often engaged in "internaitonal negotiation" with other courts. This article describes the types of non-negotiation interaction and compares those to those activities that are considered negotiations. It then discusses tools the courts are using in negotiation, such as the direct communication between courts.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

**Maureen A. Weston**, *Confidentiality's Constitutionality: The Incursion on Judicial Powers to Regulate Party Conduct in Court-Connected Mediation*, 8 HARV. NEGOT. L. REV. 29 (2003).

The author argues that judges should have a qualified power to breach the confidentiality of court-annexed mediation proceedings. This power should be granted because judges need to be able to enforce their pretrial orders and conduct its proceedings. Judges must be allowed to sanction parties who commit misconduct during mediation sessions, and this power must be granted in a limited fashion to protect the confidentiality of the session in general.

{21} MEDIATION—GENERAL

{132} CONFIDENTIALITY

{133} COURT REFORMS

{102} SUBJ MATTER: PUBLIC POLICY

**Maureen A. Weston**, *Reexamining Arbitral Immunity in an Age of Mandatory and Professional Arbitration*, 88 MINN. L. REV. 449 (2004).

This article discusses the notion that arbitrators and provider institutions should be per se immune from civil liability. In addition, the article discusses options that should be available when an arbitrator is negligent or engages in some sort of misconduct. The article provides an extensive overview of the history of these developments in arbitration.

{44} ARBITRATION—GENERAL

{149} QUALITY CONTROL

**George O. White III**, *Navigating the Cultural Malaise: Foreign Direct Investment Dispute Resolution in the People's Republic of China*, 5 TRANSACTIONS 55 (2003).

This article examines Chinese culture and its impact on multinational business dealings, specifically foreign investment in China. The author examines how culture affects business in a variety of ways, particularly its impact on arbitration. The author notes that foreign investors must be aware that the Chinese arbitrate institutionally instead of ad hoc and that arbitration is appealing for dispute resolution in China because of its legislative ratification in the country.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL

{124} COMPARISONS: CROSS-CULTURAL

**Christina L. Whittinghill**, Comment, *The Role and Regulation of International Commercial Arbitration in Argentina*, 38 TEX. INT'L L.J. 795 (2003).

This article describes arbitration used to resolve disputes in the Argentinean international trade and commerce community. Argentina has extensive participation in international organizations and conventions and thorough, evolving national legislation. Structural weakness and lack of a supranational governing body prevent the present dispute settlement system from developing fully. Once influences on the role of international commercial arbitration are harmonized, international commerce and capital will flow into Argentina.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

**Michael S. Wilk & Rik H. Zafar**, *Mediation of a Bankruptcy Case*, May-03 AM. BANKR. INST. J. 12 (2003).

The authors first review the three stages of the mediation process—the general session, caucuses, and closure. Then, the authors look at the wide range of disputes that mediation has been used in bankruptcy cases. Lastly, the authors explain that mediation has become the preferred alternative dispute process in resolving bankruptcy cases because it allows parties to air their differences and assist in coming to a compromise on the various issues.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{87} SUBJ MATTER: GOV'T

{123} SETTLEMENT: PRESSURES TO SETTLE

**Roger C. Wolf**, *The Grey Zone: Mediation and the Unauthorized Practice of Law*, 36 MD. B. J., Aug. at 40 (2003).

This article discusses the growing concern in the practice of mediation regarding unauthorized practices of law (UPL). UPLs occurs when attorneys handling mediation cases violate ethical rules or good mediation practice. This article describes five approaches/tests to determine what constitutes a UPL. The Maryland Court of Appeals has instituted competency standards for its mediators to meet, and the author compares the Maryland rules with Virginia's and North Carolina's guidelines, briefly evaluating each.

{21} MEDIATION—GENERAL

{138} ETHICS: GENERAL

{133} COURT REFORMS

**Margaret Y.K. Woo**, *Shaping Citizenship: Chinese Family Law and Women*, 15 YALE J. L. & FEMINISM 99 (2003).

This article looks at China's recent legal reform from both male and female divorce litigant perspective. The 1990s witnessed an increase in the use of formal civil litigation in the Chinese courts and a decrease in the use of informal dispute resolution, such as mediation by neighborhood committees. While community dispute resolution is still utilized, the increasing use of court adjudication may have promoted a more individualized concept of citizenship.

{21} MEDIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{92} SUBJ MATTER: INT'L

**Diane P. Wood**, *The Brave New World of Arbitration*, 31 CAP. U. L. REV. 383 (2003).

The author examines the development of arbitration law in the Supreme Court, showing how the Court has expanded its availability. Then the author examines the issues facing arbitration, including its appropriateness in consumer transactions and statutory claims, showing that the lower courts have been careful recently in extending the enforceability of arbitration clauses.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{93} SUBJ MATTER: LABOR—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Peter K. Yu**, *Traditional Knowledge, Intellectual Property, and Indigenous Culture: An Introduction*, 11 CARDOZO J. INT'L & COMP. L. 239 (2003).

The author examines the recent misappropriation of folklore, traditional knowledge, and indigenous practices and argues that this has become an increasingly important issue in global politics. The author discusses World

Trade Organization treaties designed to prevent these misappropriations and argues that the choice of forum, the mindsets of the negotiators, the extent and impact of cognitive barriers on the policymakers, and the participation of the indigenous community in the negotiation process will play major roles in this arena.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY